

**PUBLIC LAW BOARD NO. 4244**

**Award No. 246  
Case No. 255  
Carrier File No. 1499-0098  
Organization File No. 10-13D3-991.CLM**

**Parties to Dispute:** ( **BROTHERHOOD OF MAINTENANCE**  
( **OF WAY EMPLOYES**  
(  
(  
( **-and-**  
(  
(  
( **BURLINGTON NORTHERN SANTA FE RAILWAY**  
(  
(

**Statement of Claim:**

1. The Carrier violated the Agreement when on April 12, 1999, the Carrier issued a disqualification to Mr. G. A. Fountain, for alleged failure to safely and efficiently operate a Grove Crane BNX 1600066 and in connection with Rule 23- Failure to Qualify, of the current Agreement between the Burlington Northern Railroad, effective September 1, 1982.
2. As a consequence of the Carrier's violation referred to above, Claimant shall be reinstated as a qualified Grove Crane Operator and all rights of this position unimpaired and pay for all wage loss commencing March 2, 1999, continuing forward and/or otherwise made whole.

### INTRODUCTION

This Board is duly constituted by agreement of the parties dated January 21, 1987, as amended, and as further provided in Section 3, Second of the Railway Labor Act ("Act"), 45 U.S.C. Section 153, Second. This matter came on for consideration before the Board pursuant to the expedited procedure for submission of disputes between the parties. The Board, after hearing and upon review of the entire record, finds that the parties involved in this dispute are a Carrier and employee representative ("Organization") within the meaning of the Act, as amended.

### FINDINGS

On February 1, 1999, the claimant, crane operator G. Fountain, was assigned to operate a grove crane by the Carrier. On March 2, 1999, the Carrier notified the claimant that he was disqualified from the position of grove operator on crane BNX 1600066. Subsequently, the claimant requested that an unjust treatment hearing be held in accordance with Rule 62 of the Agreement in order to determine the validity of the Carrier's decision to disqualify him from operating the crane.

The following rule is applicable to the Board's decision. Rule 23 of the Agreement, entitled "Failure to Qualify," provides as follows:

- A. Employees awarded bulletined positions, or employees securing positions through exercise of seniority, in a class

in which not yet qualified, will not be disqualified for lack of ability to do such work after a period of thirty (30) calendar days thereon. Employees will be given reasonable opportunity in their seniority order to qualify for such work as their seniority may entitle them to, without additional expense to the Company.

Note: "Without additional expense to the Company" is understood to mean that an employee qualifying on a position will be entitled to the rate of pay he was receiving on his immediately previous assignment.

- B. An employe failing to qualify for a position secured by a bulletin, or in exercise of seniority will be given notice in writing of reason for such disqualification.
- C. An employe who considers himself unfairly disqualified may request, and shall thereupon be given, an investigation as to such qualifications pursuant to the provisions of Rule 62.

On March 25, 1999, the Carrier conducted an unjust treatment hearing. The record indicates that the claimant is qualified to operate several types of cranes utilized by the Carrier. In fact, the claimant has operated cranes over the past fourteen years while employed by the Carrier. However, the testimony at the hearing reveals that the claimant first operated a grove crane on February 1, 1999. The record further indicates that the Carrier issued the claimant a letter of disqualification on March 2, 1999. Therefore, the claimant operated a grove crane for a period of twenty-nine calendar days during the relevant time period.

Rule 23 of the Agreement provides, in pertinent part, that employees will be given a reasonable opportunity, during a thirty day time period, to qualify for positions with the Carrier. For the following reasons, the Board finds that the Carrier afforded the claimant a reasonable opportunity to qualify for the position of grove crane operator.

The disqualification notice issued to the claimant provides, in part, as follows:

This letter is to inform you that you are being disqualified from the position of Grove Operator on Crane BNX 1600066 for the following reasons.

#### Safety

On numerous occasions you either bump or pull the rail without notifying employees of what you are doing, or do not wait until you are notified that the employees concerned is [sic] in the clear.

\* \* \*

#### Efficiency

RP02 is a production gang. We are geared to move at a rapid pace when we are out on the track. RP02 can not [sic] continue to have days where it takes an hour to thread in 500 feet pieces of rail. I can not [sic] continue to accept the extremely long tie in times wh[ich] we are experiencing. I have been patient and tolerant with your break in period, while I feel you have made some improvement. I feel you have made some improvement. I feel that you will not improve to the point where you need to be for a gang set up for high production.

\* \* \*

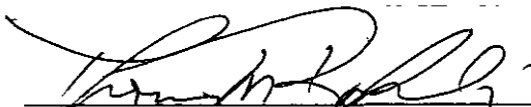
At the hearing, roadmaster E. R. Heintz testified that he assisted the claimant regarding the operation of the grove crane. Roadmaster Heintz further testified that other employees were also available to assist the claimant. Heintz stated that he disqualified the claimant based

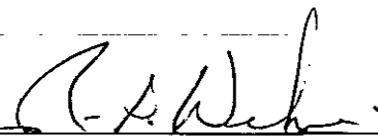
on the manner in which the claimant controlled the grove crane. He further testified that he discussed safety issues with the claimant on numerous occasions regarding his operation of the crane. In the opinion of Heintz, the claimant's operation of the grove crane improved during the claimant's qualification period. However, the claimant's job performance plateaued at an unacceptable level. Mechanic G. D. Burton also testified that he observed the claimant's operation of the grove crane during February 1999, and he questioned the claimant's ability to operate the crane. Finally, the record reveals that the claimant was afforded fifteen or sixteen working days to qualify as a grove crane operator.

Based upon these facts and circumstances, the Board finds that the Carrier afforded the claimant a reasonable opportunity to qualify for the position of grove crane operator. However, the claimant's job performance over the course of approximately one month did not demonstrate that he was qualified for such a position. The Carrier reasonably determined that the claimant did not have the ability to properly operate a grove crane. Therefore, the Board finds that the Carrier did not violate Rule 23 of the Agreement, and the claim must be denied.

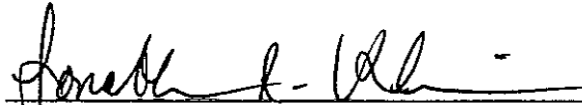
AWARD

The claim is denied.

  
Thomas M. Rohling, Carrier Member

  
R. B. Wehrli, Employee Member

Public Law Board No. 4244  
Award No. 246  
Case No. 255  
Carrier File No. 1499-0098  
Organization File No. 10-13D3-991.CLM

  
Jonathan I. Klein, Neutral Member

This Award issued the 4<sup>th</sup> day of February, ~~1999~~<sup>2000</sup>.