

PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
TO) vs
DISPUTE) BURLINGTON NORTHERN RAILROAD COMPANY

Claim of Rodney L. McGhee for payment for the difference in Nordberg Spike Puller rate and rate of position worked beginning December 4, 1986, account disqualified from Nordberg Spike Puller on December 4, 1986, and that his qualifications as a Spike Puller Operator be reinstated.

FINDINGS: The Board, on consideration of the whole record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated April 10, 1987, that it has jurisdiction of the parties and the subject matter, and that, pursuant to the Agreement dated April 10, 1987, oral hearing by the parties, including Claimant, has been duly waived.

"An investigation was accorded you on December 13, at Birmingham, Alabama, regarding your disqualification off the Nordberg Spike Puller while working on the tie gang on December 4, 1985.

Testimony showed that although you had qualifications on other machines, you had never worked with the Nordberg claw-type puller before. You were given several days to demonstrate your ability, which is more than is customarily given to an employee claiming to have qualifications. In the judgment of three witnesses, all of whom are directly responsible for machine productivity, you could still not satisfactorily run the machine."

The transcript of investigation shows the following testimony of Roadmaster Steve Gunn, Tie Gang T-211, headquarters Springfield, Missouri:

"Q. How many men are normally on this gang?

A. Forty-six normal. At this time we were cut back to 28.

Q. As part of your duties, are you also responsible for ensuring good productivity of this gang?

A. Yes, sir, productivity and safety.

Q. Between November 20th and December 4th, at various times was Mr. Rodney L. McGhee a part of your gang?

A. Yes, sir, he was.

Q. Do you have a record of what days he actually performed service?

A. Rodney McGhee reported to my gang on the 20th of November. I wasn't here on the 20th; I was in school, and he was here on the 21st of November. When I got here, I looked at him running the spike puller on the 21st, and that is the day that I disqualified Mr. McGhee, but since that date the office allowed Mr. McGhee two more days to try and run the machine. He was here between the 20th and the 4th of December, when he was disqualified again.

Q. What was Mr. McGhee's assignment when he was working on your gang?

A. Mr. McGhee was considered as a machine man, hourly rated operator.

Q. What machine did he work on?

A. Spike puller BNX470272.

Q. What's the manufacturer of this machine?

A. Nordberg.

Q. Perhaps you can tell us what is a Nordberg spike puller? What is its functions; what functions does it perform related to the production of your gang?

A. The Nordberg spike puller is a machine used out in front of the gang to pull the spikes, and it's geared up to where it can pull 12 or 13 ties per minute to enable this tie gang to average 2,000 or better ties per day.

Q. In regard to the operation of the spike puller, specifically what is the operator's function? What does he do to operate the machine?

A. The operator adjusts the head of the spike puller to the spike patterns where he can in one motion drop the head; the second motion would be come in on the head of the spike and up, and travel to the next tie and do the same process.

Q. And what was the expected productivity rate that you--
A. Twelve to thirteen ties a minute to enable the gang to perform its functions.

Q. Is there more than one type of spike puller in your gang?
A. No, sir, not at this time. We have had different types, but this is the latest model of spike puller that's on the BN right now. This is the newer version.

Q. Are there other types of spike pullers to your knowledge?
A. Yes, sir, right.

Q. Are the production of thos similar to this one?
A. This one is quite different from the others because it has a printed circuit board, and the adjustments on the heads are different, plus it's a one-trigger motion. You have a trigger that's set up in the form of a toggle switch where, when you--you have to--all your controls for pulling the spike is there in the trigger in your hand and the only other thing would be your.... It's a little more complicated than the other spike pullers.

Q. The production rate you mentioned of 12 to 13 ties is 12 to 13 ties per minute. What happens when this production rate--what happens to your gang when this production rate is not achieved?
A. Well, if I can't get that amount of production out of the spike pullers, one thing it affects is getting people back to help out the remaining part of the gang to complete the whole job. Plus, getting out of the way of the machines that's coming behind it.

Q. How much time to your knowledge did Mr. McGhee have available in this period from November 20th through December 4th--how much time did he have to operate the machine during that period of time?

A. When I first talked to Mr. McGhee on the 21st, I went back and watched Mr. McGhee on the machine for about 10 or 15 minutes and he wasn't making any progress, and I didn't feel that he was able to do any more than just a trackman I took off the track and put on it. I disqualified him after talking to him about it, and the office told me to give Mr. McGhee two more additional days to see if he could come up to par. I gave him three more days. I waited until Mr. Peglow arrived so he could evaluate him instead of my being the final say-so, and so all told he had a total of, well say, 3 days and 15 minutes.

Q. During that period of time, how much time would you estimate you, personally, were able to observe him?

A. I observed him each day off and on, I'd say, at least 3 or 4 hours out of each day, where I would see what he was doing and how fast he was doing it; how many spikes he was leaving back in plates, or whatever.

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- Q. What was his best productivity rate, to your knowledge?
A. Four or five ties a minute.
- Q. Is this rate consistent with your requirement for production for spike puller operator?
A. No, sir, I had a junior employee on the machine ahead that was out-pulling him; the front machine was pulling 12 to 13 ties a minutes and finishing and getting back while Mr. McGhee was still struggling to get through.
- Q. Was the Nordberg, to your knowledge, the Nordberg spike puller BNX470272 in proper working order during the period you observed Mr. McGhee?
A. Yes, sir, it was. He had a problem with the rail wheel on it at one time, but the reason he was having a problem with it was because he was using his trigger improper, and from the mechanic's point of view he was letting his head drop because of him not knowing how to release his trigger mechanism, and this causing his wheel to bang to bank on the rail and eventually it having to be replaced.
- Q. In your opinion, was Mr. McGhee capable of improving on this production rate that he had achieved in this period of time?
A. I feel in three days he should have been able to fly with it instead of still standing about the same average.
- Q. How long when you have a new machine operator or one coming to your gang with qualifications, how long do you normally allow for an operator to become familiar with the machine and assume responsibility for a full production rate?
A. If the operator come in--a qualified operator comes in--he's supposed to get right in there and go ahead with the flow. There is no, you know, you might have to make some adjustments or change things his way--to his liking, I'd say--but there's a difference when the operator has never seen the particular machine. If you haven't seen a machine, you don't know what to do with it.
- Q. What was your opinion as gang roadmaster of Mr. McGhee's qualification to run the Nordberg spike puller?
A. He was not qualified on this particular machine. He didn't know anything about it. Now that is to be expected, I guess, if a man hadn't seen anything; you can't know anything if you haven't seen it or worked with it.
- Q. Was the machine successfully operated prior to his arrival to the gang?
A. Yes, sir.
- Q. After he was disqualified, was it successfully operated since?
A. Yes, sir.

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- Q. Did it achieve the productions rates 12 to 13 ties per minute?
- A. Yes, sir. In fact, we were able to get both machines out of the way at almost the same time, one coming out back to back; we were able to get three people back instead of just getting one back to go and help do the other functions of bringing the gang on through." (Tr., pp. 5-8).

- "A. Now, on the 3rd they started at 8:19 on track No. 5. Hodges finished at 9:20 and he pulled 993 ties. Rodney finished at 12:45 and took a half hour for lunch; and on, let's say the 26th, Rodney started at 8:10 on track 12 and Hodges completed that track at 8:22 and had 200 safe ties pulled. Rodney completed at 8:50. They went to track No. 12, started at 10:00. Hodges was 361 ties ahead of McGhee. He completed at 11:15. Rodney completed at 1:10. Hodges pulled 12 to 15 ties per minute, and McGhee was pulling 4 to 5 ties per minute. On the 26th McGhee held shearer cut only 25 ties under that track, and I had to put the shearer on lunch because he couldn't go any further...all the way through his lunch to get out tie count. We started track 13 at 1:50. Hodges pulled 451 ties, completed at 3:00. McGhee pulled 189 ties and didn't finish. I think those are the dates he was working." (Tr., p. 12).

The transcript of investigation shows the following testimony by Mr. M. G. Marion, Foreman T-211, headquarters Springfield, Missouri:

- "Q. What kind of production is expected from the Nordberg spike puller machine?
- A. Twelve to 15, over 2,00 ties a day, full productivity.

- Q. All the time he was operating the machine, how much time did you personally have a chance to observe him?
- A. I watched him going down the track sometimes maybe 5 or 6 hours a day.
- Q. Do you have any knowledge of his record of productivity?
- A. Yeah, comparing him and Hodges, Hodges pulling 7 to 8 ties more per minute.

- Q. How long would you say it took Mr. Hodges to learn the machine, to be able to get full productivity?
- A. Maybe about a day, if that long.

- Q. So, in other words, it took Mr. McGhee approximately 4 hours and 6 minutes, minus breakdown time and lunch, to do the same job that Hodges did in 41 minutes on that date?
- A. Yes. (Tr., p. 26).

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The transcript of investigation shows the following testimony of Mr. Carl G. Peglow, Manager of Regional Gangs, Springfield, Missouri:

- "Q. When you observed Mr. McGhee, what production rate was he working at?
A. Four to five ties per minute. There was minutes that he got two ties per minutes, or times he got six and seven, but averaged out about four to five ties per minute." (Tr., pp. 41-42).

The transcript of investigation shows the following testimony of Claimant R. L. McGhee:

- "Q. When you came to the gang on November 20th, had you seen the Nordberg spike puller that the tie gang has?
A. Yes, sir.
- Q. When have you seen that machine prior to November 20th?
A. I went down to bump on a helper on the tie gang in the last part of '84, and just walking around looking at the machinery.
- Q. Did you have a chance at that time to operate it?
A. No, sir.
- Q. Had you ever received any instruction on the Nordberg spike puller?
A. No, sir. There was no manual on the machine at the time.
- Q. So, am I correct in saying that prior to coming to the tie gang on November 20th you had not operated or had any familiarity with the Nordberg spike puller? Is that correct?
A. Yes, sir.
- Q. Okay. On November 20th did you attempt to place a bump on tie gang T-2?
A. Yes, sir." (Tr., p. 48).
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- "Q. When was the first day that you operated the machine?
A. November 21st.
- Q. Was that the first day that you had operated the Nordberg spike puller in your railroad career?
A. Yes, sir." (Tr., p. 49).
- "Q. Mr. Peglow has stated that when he observed the operation of the machine he noticed a production rate of around five ties per minute. Were you aware that Mr. Peglow was there?
A. Yes, sir.
- Q. Do you dispute that statistic?
A. No, sir, but he failed to said that I was having to go out in front of my machine and clean off dirt that the scarified had kicked over and move logs--well pieces of ties rather--that was

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in the performance of my machine.

Q. Are you saying the lead machine did not have to do that?

A. I never seen what kind of atmosphere he was working in." (Tr., p. 52)

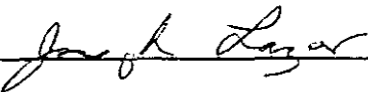
The evidence of record clearly shows that Claimant's production rate on the Nordberg spike puller was about four to five ties per minute, while the expected rate of production was twelve or thirteen ties per minute. Claimant bumped into the job. Although he held seniority in the classification, Claimant admits that he had never before operated the Nordberg spike puller. The responsibility falls upon the employee who bumps into a job claiming to be qualified to know beforehand what he is getting into. In the instant case, where Claimant states that he is already qualified, bumps into the job and is not asked by the Carrier to take the job, the Carrier does not have the burden of instructing and qualifying him.

The record shows that Claimant was given more than average time to learn the machine, especially considering the fact that he bumped into the job claiming to be qualified. Instead of the normal two to three hours given to a qualified employee to refamiliarize himself with the machine, Claimant was given three full days to familiarize himself with it.

In the particular circumstances of the present case, the record shows substantial evidence in support of the Carrier's determination to disqualify Claimant.

A W A R D

1. The Carrier is not in violation of the Agreement.
2. The claim is denied.



JOSEPH LAZAR, CHAIRMAN AND NEUTRAL MEMBER

DATED: December 14, 1987