

PUBLIC LAW BOARD NO. 7633
CASE NO. 36

BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYEES

PARTIES

TO DISPUTE:

and

UNION PACIFIC RAILROAD COMPANY
(Former Missouri Pacific Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier improperly and unjustly disqualified and removed Machine Operator J. Seals from his anchor applicator operator position on Gang #9112 by letter dated April 23, 2013 (System File UP509JF13/1585921 MPR).
2. As a consequence of the violation referred to in Part 1 above, Claimant J. Seals shall be compensated ‘... for ten (10) hours each day, for the difference in the Claimant’s straight time rate of pay between Maintenance of Way Track man and Anchor Applicator Operator, to begin on April 22, 2013, through and including on a continuous basis until this matter is settled and the removal of his unjust disqualification ***’.”

FINDINGS:

Upon the whole record, after hearing, this Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

By letter dated April 23, 2013 Claimant was disqualified as a Machine Operator on an Anchor Applicator for his failure to operate the machine without damage resulting in significant delay and down time on the machine. The claim asserts that it was an unjust disqualification without affording Claimant a fair and impartial investigation, indicating that this is considered a form of discipline, and contends that the machine broke down because it was not properly repaired by Carrier, and that Claimant was singled out for something that was not his fault or for which he had not been properly trained.

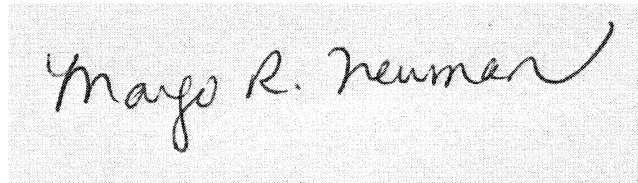
Carrier's denial maintains that it has the right to determine qualifications and fitness and ability, citing Third Division Awards 36957 and 32366, and attaches the Manager's statement indicating that Claimant broke 3 sets of anchor shoes in one day, which is extremely unusual, that he was either intentionally making the machine inoperable or was not qualified to run it, and that in the judgment of both the Equipment and Gang supervisors, Claimant was unable to properly operate and maintain the machine. It contends that disqualification is not discipline, and notes that the Organization did not meet its burden of showing that Claimant was fit or that its determination was arbitrary or capricious, relying on Third Division Awards 21615 and 14040. In its subsequent appeals, the Organization attaches a statement from Claimant indicating that the machine had broken down on other occasions and with other operators, some of whom were not held accountable, and that such break downs were not his fault. It maintains that such allegations were never refuted by Carrier.

A careful review of the record convinces the Board that the Organization failed to meet its burden of proving that the disqualification of Claimant for his performance issues which led to continued mechanical failure of his anchor applicator machine was arbitrary or capricious, which is its burden once Carrier exercises its managerial prerogative to determine Claimant's fitness and ability to meet the job qualifications. See, e.g. Third Division Award 36957. This is a fitness and ability case, not a discipline situation, as was found to exist in the cases relied upon by the Organization. See., e.g.

Fourth Division Cases 2634 and 3470. The Organization bears the burden in disqualification cases to show either that Claimant was fit to perform the work, or that Carrier's fitness determination was arbitrary. See, e.g. Third Division Award 21615. The Organization was unable to show that the reason why the anchor shoes were repeatedly breaking on Claimant's machine was unrelated to Claimant's job performance, as determined by his supervisors, or that there was any substance to Claimant's assertion that he was being treated disparately with respect to the operation of this machine. Under these circumstances, the Board is unable to conclude that Claimant's disqualification was arbitrary or capricious.

AWARD:

The claim is denied.



Margo R. Newman
Neutral Chairperson



K. N. Novak
Carrier Member



Andrew Mulford
Employee Member
*** Dissent to follow ***

Dated: 09/01/15

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