

PUBLIC LAW BOARD NO. 7660
CASE NO. 23

BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYEES

PARTIES

TO DISPUTE:

and

UNION PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Carrier’s disqualification of Claimant I. Alto from system speed swing operator position by disqualification letter dated January 17, 2014 was inappropriate, baseless and constituted a violation of the Agreement (System File B-1448U-101/1600559 UPS).
2. As a consequence of the violation referred to in Part 1 above, the Carrier shall now restore Claimant Alto’s system speed swing operator qualification and make him whole for any loss suffered as a result of the 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.

This case involves the January 17, 2014 disqualification of Claimant, a 20 year employee working on Consolidated System Gang 9048 as a TMO, from operating the system speed swing. Claimant was assigned to travel the speed swing from one job site to another project on January 16, 2014, during which time the fan belt broke. Claimant continued to move the machine, which arrived at its destination overheated, with steam rising from the engine, the red warning light for the alternator illuminated on the dash, and the temperature gauge showing 280 degrees. Claimant was told to shut down the machine by other employees who noticed the steam coming from the engine. Claimant was disqualified from his position on the basis of his failure to operate the equipment safely by paying attention to the gauges and warning lights. The Organization requested an unjust treatment hearing pursuant to Rule 48(n), which was held on February 21, 2014.

The claim was initiated and appealed by the Organization based upon the contention that Claimant performed his duties safely and stopped operating the machine when he discovered the mechanical problem, which was not his fault. It included a written statement from Claimant explaining that the alternator light had not come on, the engine is located behind him and he could not see any steam when he was concentrating on maneuvering forward, that he shut down and locked out the machine as soon as he learned of the issue, and that there could not have been any damage since the machine was sent out immediately upon the mechanic replacing the fan belt.

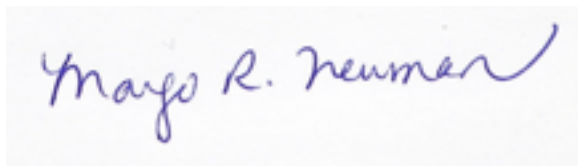
The Carrier's denials include statements from two managers explaining the condition of the machine when it was finally stopped at the insistence of other employees, the fact that Claimant would have seen the alternator light on and the engine overheating if he had been paying proper attention and operating safely, that the thermostat was at 280 degrees, and that there was some damage to the thermostat and some gaskets or seals. The Carrier's responses include its argument that it acted within its

managerial authority to determine qualifications and fitness and ability, that it presented reasonable and legitimate bases for its action, and that the Organization failed to meet its burden of proving that its decision to disqualify Claimant was arbitrary, relying on precedent including Third Division Awards 32366, 14040; Public Law Board No. 6402, Award 82.

A careful review of the record convinces the Board that the Organization failed to meet its burden of showing a violation of the Agreement or that the Carrier's disqualification of Claimant was arbitrary or without rational basis. See, e.g. Third Division Award 32366; 36957. Regardless of Claimant's assertions to the contrary, there is no dispute that the machine he operated arrived at its destination overheated with the engine steaming, the alternator gauge illuminated, and the thermostat at 280 degrees. There is no contention that the breaking of the fan belt was the fault of Claimant. Rather, the Carrier relied upon the fact that he should have been aware of what was happening to the equipment and stopped operating it at the first sign of trouble, not after it had reached the point it did, in determining that he did not meet the qualifications of the position. Under these facts, it cannot be concluded that the Carrier's exercise of its managerial discretion in disqualifying Claimant from operating this equipment on January 17, 2014 was either arbitrary or without rational basis. Therefore, the claim must fail. See, e.g. Third Division Award 14040.

AWARD:

The claim is denied.



Margo R. Newman
Neutral Chairperson

Dated: August 2, 2016



K. N. Novak
Carrier Member



Andrew Mulford
Employee Member

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