

**NATIONAL MEDIATION BOARD**

**PUBLIC LAW BOARD NO. 6402**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES**

and

**UNION PACIFIC RAILROAD COMPANY**

)  
) Case No. 66  
)  
) Award No. 57  
)

Martin H. Malin, Chairman & Neutral Member  
D. D. Bartholomay, Employee Member  
D. A. Ring, Carrier Member

Hearing Date: January 25, 2006

**STATEMENT OF CLAIM:**

1. The discipline (disqualified from the position of machine operator on District Tie Gangs operating all machines and a Level 3) imposed on Machine Operator C. E. Nash in connection with a collision of his Tie Crane THC111 with Anchor Spreader AASP9104 on June 13, 2004 was arbitrary, capricious, unwarranted and in violation of the Agreement (system File MW-04-128/1405734).
2. As a consequence of the violation referred to in Part (1) above, the disqualification and Level 3 shall now be removed from Mr. C. Nash's record and he shall be reinstated to his machine operator position with compensation for any and all lost straight time and overtime wages beginning June 15, 2004 and continuing.

**FINDINGS:**

Public Law Board No. 6402, upon the whole record and all the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute herein; and, that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

On June 13, 2004, Claimant was operating Tie Crane THC 111 when he collided with Anchor Spreader AASP 9104. On June 14, 2004, Carrier notified Claimant that he was disqualified from the position of machine operator due to his "failure to show the necessary fitness and ability required to operate equipment in a safe & efficient manner." On June 15, 2004, Carrier issued Claimant a Notice of Proposed Discipline alleging that Claimant was in violation of Rules 1.1, 1.1.2, 41.2, 42.2.2, 136.7.3, and 136.7.4 and proposed discipline at UPGRADE Level 3. The Claimant requested that he be allowed to go through Carrier's

Continuing Operating Rules Education (CORE) training in lieu of discipline. Carrier granted the request. Claimant completed the training on July 14, 2004.

The Organization contends that Carrier improperly assessed Claimant discipline at Level 3 and disqualification from working as a Machine Operator without a hearing and in violation of the Agreement and the CORE training program. We are unable to agree.

The Organization's contention that Claimant was assessed discipline at UPGRADE Level 3 is not supported by the record. Claimant's record does not show any discipline assessed against him for the June 13 incident; rather it shows his completion of the CORE training.

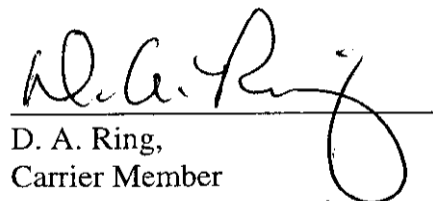
Claimant was disqualified as a Machine Operator, but such a disqualification is not disciplinary. *See, e.g.*, Public Law Board 6249, Award No. 8, Third Division Award No. 35713. Consequently, no hearing was required. Nevertheless, Carrier may not disqualify an employee in an arbitrary or capricious manner. The record reflects that the incident that led to Claimant's disqualification followed incidents where he failed to operate a dozer safely resulting in the dozer turning over on its side and failed to stop a ballast regulator resulting in a collision. In light of Claimant's record of unsafe operation of machines, we cannot say that Carrier was arbitrary or capricious in disqualifying him.

#### AWARD

Claim denied.

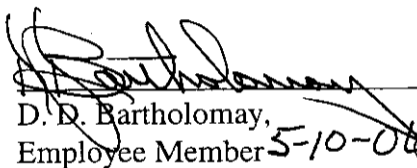


Martin H. Malin, Chairman



D. A. Ring,  
Carrier Member

5-10-2006



D. D. Bartholomay,  
Employee Member 5-10-06

Dated at Chicago, Illinois, April 27, 2006