

BEFORE SPECIAL BOARD OF ADJUSTMENT 1037

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
CSX TRANSPORTATION, INC.

Case No. 37

STATEMENT OF CLAIM:

The disqualification of Maintenance of Way Employee H. J. Cooks, Jr., I.D. No. 196256, from Spike Puller, Machine Operator position on Force 5XC1, on account of his failure to show sufficient ability, was without just cause, and the subsequent unjust treatment investigation which was held on July 22, 1994, in Waycross, Georgia, failed to support the Carrier's findings.

FINDINGS:

The Claimant, Handy J. Cooks, Jr., is currently employed by the Carrier as an Apprentice Foreman in Montgomery, Alabama.

On February 23, 1994, the Organization, on behalf of the Claimant, notified the Carrier of its desire to conduct an unjust treatment hearing on account of the Claimant's disqualification as a Machine Operator 13-C Spike Puller on Force 5XC1 in Georgia per the Carrier's letter of February 18, 1994. As a result of this request, the hearing commenced on July 22, 1994. On August 11, 1994, the Carrier notified the Claimant that his disqualification from the Spike Puller position was justified and, thereby, confirmed.

The Claimant filed his appeal challenging the Carrier's decision. The Carrier argues that its decision was justified and supported by the evidence adduced at the hearing.

The parties not being able to resolve the issue, this matter comes before this Board.

This Board has reviewed the record in this case, and we find that the Carrier has not presented sufficient evidence to support the disqualification of the Claimant.

Therefore, the claim shall be allowed and the disqualification of the Claimant from the Spike Puller Machine Operator position shall be rescinded.

The record in this case reveals that the Claimant was moved into the new position of Spike Puller on or about January 31, 1994. There is some confusion as to how many days he actually worked at that job, but he was disqualified from the position on February 17, 1994. There is some evidence that he worked approximately seven days, and there is other evidence that he worked not even four days.

There is no question that the Claimant had a difficult time operating the machine when he was first placed on it. His supervisor noticed him starting and stopping the machine and trying to adjust the heads on several occasions. However, when asked at the hearing as to whether or not he even questioned the Claimant in an effort to try and ascertain what the problem was, the supervisor stated, "No sir, I did not."

There was some testimony that the supervisor was not aware of any problems with the machine, but there is also other testimony that indicates that there was some replacement of parts done to the machine shortly after the Claimant was taken off of it. The Claimant had never operated a spike-pulling machine before; but it is interesting to note that even after he was disqualified, the Carrier admits that the Claimant was asked to

come back and operate it again. The Claimant testified that the brakes had to be adjusted, the oil was low, the wheel bearings needed grease, and the heads went from side-to-side much too easily. The Claimant also stated that he reported the conditions to the mechanic.

Given the fact that the machine had some problems which did indeed receive repair within a few days after the Claimant's being removed from the position, and the fact that the Claimant was only given four or maybe seven days to attempt to work the machine, and the fact that he did not receive much help from supervision in his effort to learn the machine, this Board must find that the Claimant was not given an adequate time to learn the job. Therefore, the Claimant's disqualification was premature and improper.

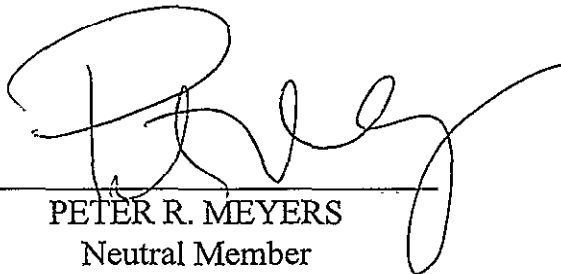
This Board understands that it is important for employees to be able to operate the machinery to which they are assigned. However, there is also some obligation on the part of management to assist an employee once he or she is placed on a job so that that employee can learn to operate the equipment properly. In this case, the Carrier provided no or minimal assistance to the Claimant in showing him how to operate the machine and did not even inquire as to what the problem was when the supervisor saw him having some difficulty performing the operation. The person who was placed on the spike puller after the Claimant had some experience in operating it and that was apparently why he had an easier time.

This Board finds that the Claimant was improperly disqualified from his position

and, therefore, the claim is sustained and he is ordered re-qualified. If he is placed back on that piece of equipment, this Board orders that he be given some training to be able to operate it properly. The Claimant shall be made whole for any losses resulting from the improper disqualification.

AWARD

Claim sustained.



PETER R. MEYERS
Neutral Member

Carrier Member

Organization Member

DATED: _____

DATED: _____