

SPECIAL BOARD OF ADJUSTMENT 1110

Award No. 94
Case No. 94

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees
and
CSX Transportation, Inc.

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier disqualified employe P. Acree from a backhoe operator position on SPG Force 5XS3 on April 3, 1996 [System File S-G-9793/12(96-856) CSX].
2. As a consequence of the above-stated violation, the Organization requests that the "*** disqualification from the backhoe for the 1996 production season be removed from Mr. Acree. ***"

FINDINGS:

This Board, upon the whole record and all of the evidence, finds and holds as follows:

1. That the Carrier and the Employees involved in this dispute are, respectively, Carrier and Employees within the meaning of the Railway Labor Act, as amended;; and
2. That the Board has jurisdiction over this dispute.

OPINION OF THE BOARD:

The record omits any evidence that the representatives of the Carrier acted inappropriately in reaching the conclusion to disqualify the Claimant from continuing to serve as a backhoe operator. The Carrier furnished the Claimant with the required opportunity to demonstrate that the Claimant could perform the disputed work as required. The record contains sufficient detail to substantiate that the Claimant did not receive unjust treatment by the Carrier.

Rule 39 contains certain provisions relating to discipline and grievances. Section 3 and Section 4 provide, in relevant part, that:

Section 3

An employee who considers himself otherwise unjustly treated shall have the same right of hearing and appeal as provided above if written request is made to the Division Engineer or the Engineer of Bridges within ten (10) calendar days of the cause for complaint.

Section 4

An employee against whom charges are preferred, or who may consider himself unjustly treated, shall be granted a fair and impartial hearing by a designated official of the Company. Such hearing shall take place within ten (10) calendar days after notice by either party. Such notice shall be in writing, with copy to General Chairman, and shall clearly specify the charge the Carrier is making or nature of the employee's complaint.

The Claimant actually began operating a backhoe on March 7, 1996. On April 3, 1996, the Carrier disqualified the Claimant from a position as a backhoe operator.

In a letter dated April 8, 1996, the Organization submitted a request for an unjust treatment hearing to the Director of Employee Relations. In a letter dated April 15, 1996, the Carrier scheduled the unjust treatment hearing for May 1, 1996. After the unjust treatment hearing, the Carrier sent the Claimant a letter, dated May 20, 1996, in which the Carrier found that the Claimant had received a 'fair opportunity to qualify as a backhoe operator.

The Organization asserts that the Carrier failed to hold the unjust treatment hearing within the ten days specifically required. The Organization specifies that the Claimant sought a hearing by virtue of a letter dated April 8, 1996, however, the hearing did not occur until May 1, 1996, which was beyond the ten-day required period. The Organization further argues that the disqualification decision occurred after the 30 days allowed by the Agreement.

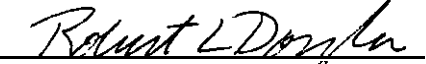
In the present matter, the record indicates that the initial request for the unjust treatment hearing was submitted to the Director of Employee Relations. The Agreement requires that such a request be submitted to the Division Engineer or the Engineer

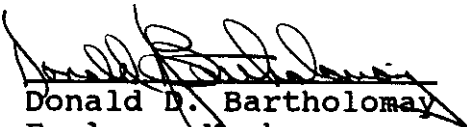
of Bridges. The initial request was not submitted to the appropriate person within the required time and therefore was not timely. As a result, the assertion that the Carrier did not schedule the unjust treatment hearing within the specific time lacks merit.


Furthermore, the extensive record of the subsequent hearing concerning the dispute reflects that the Carrier acted within the required thirty days after the Claimant actually began operating the backhoe to disqualify the Claimant. Under the facts and circumstances set forth in the record, the evidence does not substantiate that the Carrier provided unjust treatment to the Claimant by determining to disqualify the Claimant from the backhoe operator position.

AWARD:

The Claim is denied.


Robert L. Douglas
Chairman and Neutral Member


Donald D. Bartholomay
Employee Member


Mark D. Selbert
Carrier Member

Dated: 5/14/01