

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 546

\* File 910328

Docket No. 546

Parties to Dispute: Brotherhood of Maintenance of Way Employees and Union Pacific Railroad Company (Former Missouri Pacific Railroad Company)

Statement of Claim: (1) Carrier violated the Agreement, especially Rule 12, when H. L. Dixon was disqualified on the Camron tamper on January 23, 1991 and formally disqualified on March 11, 1991.

(2) Claim on behalf of Mr. Dixon for difference in pay beginning January 24, 1991.

Findings: The Board has jurisdiction by reason of the parties Agreement establishing this Board for that purpose.

The Claimant, a Machine Operator since 1979, H. L. Dixon, with 12 years seniority, was disqualified about 2:00 PM on January 23, 1991 effective on the completion of his work day as an Operator of the "Camron Tamper."

A formal investigation in connection therewith was held on February 7, 1991 on the charge "due to your inability to become qualified since attaining that position." The Carrier concluded from the evidence adduced thereat that the Claimant Machine Operator after some 2 1/2 months on the Camron Tamper was not qualified to operate same and therefore was disqualified therefrom on March 11, 1991.

The Claimant was accorded the due process to which entitled under his discipline rule.

There was insufficient evidence adduced to support the Carrier's conclusion of culpability. The testimony of the Work Equipment Foreman, L. B. Manual and particularly that of Surfacing Gang Foreman Bowman appears to be more contrived than being factual.

I find nothing on the record to support the Union's allegation that because the Claimant was a Union Representative (Local Chairman) that he was disqualified.

Our Award No. 267 reflects the Board's belief that the Claimant or his Representative must show that the Carrier acted arbitrarily or unreasonably in order to support a

decisional reversal. The majority believes that they did so in this case.

As pointed out, the Tamping machine, in particular ATS-78, can surface cross level or track surface and line it. The record shows that Manager Track Maintenance (MTM) R. G. Lively requested that the Claimant encourage Surfacing Gang Foreman M. Bowman to use the laser. The record shows that Bowman did not care to use the laser as much as he should have. Foreman Bowman was inside the Tamper ATS-73 setting figures whenever he deemed it necessary. Yet he appeared too willing to place all of the blame on the Claimant Machine Operator Dixon.

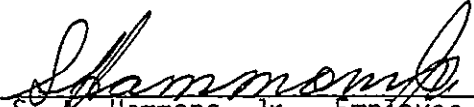
The record further reflected that Bowman dissembled more often than not in answering questions by the Claimant.


Exhibits reflect that the Claimant had previously worked on and operated the Camron Tamper (ATS-73) since 1990 and that at least three other Track Foremen thought he was competent thereon. The alleged Carrier provided training period of several weeks and/or several months was just not borne out by the record. All the alleged attention and help given on assistance and training was not borne out by this record.

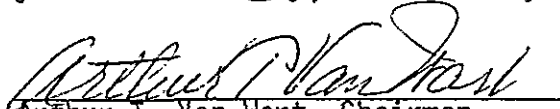
The record shows that the Claimant was not used in the same manner as were other Machine Operators. The Machine Operator, Wilson Pryor, used to replace the Claimant was junior to him and was the previous Machine Operator. That fact, in certain circumstances, is certainly not an unusual cause for someone to become suspicious. The machine involved had been indicated if not proven, to be not mechanically correct. That fact caused the suspicion to grow stronger. Irrespective thereof the record was not such as to clearly support the Carrier's decision for disqualification.

Award: Claim sustained.

Order: Carrier is directed to make this Award effective within thirty (30) days of date of issuance shown below.

  
S. A. Hammons, Jr., Employee Member

  
Kathy A. Alexander, Carrier Member

  
Arthur T. Van Wart, Chairman  
and Neutral Member

Issued November 28, 1992.