

SPECIAL BOARD OF ADJUSTMENT NO. 313

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
UNION PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- "(1) The Carrier violated the effective Agreement when it failed and refused to permit Roadway Equipment Operator August Mull to displace on diesel locomotive crane 010513 on December 23, 1957.
- "(2) Roadway Equipment Operator August Mull now be allowed the exact amount lost during the period from December 23, through December 31, 1957, because of the violation referred to in Part (1) of this claim."

FINDINGS:

Special Board of Adjustment No. 313, after giving the parties to this dispute due notice of hearing thereon and upon the whole record and all the evidence, finds and holds:

The carrier and employee involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Board has jurisdiction over the dispute involved herein.

We concur with the carrier in its position that it has been the right and duty to require that operators of its equipment be qualified to perform the work. This is necessary for the safety of its employees and the public and for the protection of its property. It is well recognized that the carrier has the right to make the initial determination as to fitness, ability and basic qualifications in the assignment of personnel.

We also concur that a referee should not substitute his judgment for that of the carrier's officers who have the responsibility for making such decisions unless there is a clear demonstration of a gross abuse of discretion, arbitrariness, capriciousness, or unreasonableness. But without some limitation upon the manner in which management may exercise its discretion in these matters, senior employees could easily be deprived of valuable seniority rights which they have bargained for in the working agreement.

We also recognize that the carrier has a right to require the employee to demonstrate his fitness and to be checked out by a supervisor, as the carrier was requiring here in accordance with its usual procedures.

But in the case at hand, the claimant had many years of experience as an operator of various kinds of roadway equipment, including cranes, and 43 days' experience in operating this particular crane. He had less than a year previously bid in and received the assignment to operate this same diesel locomotive crane, the absence of a recorded qualification notwithstanding. There is no evidence that his work was unsatisfactory. This does not necessarily prove his qualifications, but it makes for a strong inference.

It appears to us that both the claimant and the supervisor were uncooperative in taking steps to have the claimant formally qualified on the record, and that each had bowed his neck in the matter and that the actions of both were arbitrary. In view of this, we might leave the parties where we found them, but this would penalize the claimant only.

Rule 32(h) contemplates that the carrier on occasions may assign an employee to positions on which he may not prove to be proficient and provides what course the carrier may take in case the employee fails within a reasonable time to demonstrate his fitness and ability. But it does not require the carrier to do it. It also places some affirmative duty upon the carrier in providing that "employees will be given full cooperation of department heads and others in their efforts to qualify." We believe there was a lack of full cooperation in this case. We believe that this tilts the scales in favor of the employee in this case and that the claim should be sustained.

AWARD:

The claim is sustained.

SPECIAL BOARD OF ADJUSTMENT NO. 313

(s) Marion Beatty

Marion Beatty, Chairman

(s) A. J. Cunningham

A. J. Cunningham, Organization Member

(s) A. D. Hanson

A. D. Hanson, Carrier Member

Omaha, Nebraska
November 21, 1960