

SPECIAL BOARD OF ADJUSTMENT NO. 280

Award No. 173

Case No. 260

PARTIES
TO
DISPUTE

Brotherhood of Maintenance of Way Employees
and
St. Louis Southwestern Railway Company

STATEMENT
OF CLAIM

"CLAIM OF THE SYSTEM COMMITTEE THAT:

1. Carrier violated the effective Agreement when Machine Operator Willie C. Scott was unjustly disqualified as Mobile Crane Operator.

2. Claimant Scott shall now be reinstated to his former position as Mobile Crane Operator, the disqualification be removed from his record, his record be cleared of all charges, and he be compensated for all lost earnings due to this disqualification."

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

Claimant had been employed by Carrier for approximately thirteen years. He was disqualified as a Mobile Crane Operator on September 29, 1981, by a letter from Carrier for the reason that he did not apparently show aptitude to handle the position. Subsequently, Claimant requested a hearing which was granted. Following the hearing, Carrier concluded that the evidence did not indicate that the Claimant had the necessary qualifications to be a Mobile Crane Operator.

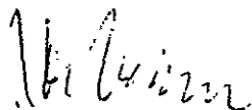
The transcript of the hearing indicates that Claimant had problems in operating the mobile crane during the week of September 21. From the testimony, it was apparent that he had difficulty in controlling the load and in a number of instances swung the load close to where men were working, producing a very unsafe mode. In one instance when he was handling a 78 foot piece of rail, he dropped the load several

times. From the Organization's point of view, the Claimant had only been operating the crane in question for seven days at the time of his disqualification. Furthermore, he had received little or no instruction on that crane in that period of time. In addition, the Foreman indicated that he thought the Claimant could operate the crane in a safe manner but that he was very nervous and unsure during the seven days in question. There is also testimony, however, that Claimant had operated a crane somewhat similar to that involved during the week of September 21 in the past over a period of two to three months. From the evidence adduced, it is quite apparent that Claimant did not have the then current qualifications to be a Mobile Crane Operator at the time of his disqualification. The burden of proof under those circumstances was on the Organization to show that Claimant did have reasonable and sufficient ability to fill the position. This was not done according to Carrier.

It has been established in many awards in the past that it is the prerogative of Management to judge the fitness and ability of its employees, and its decisions in this regard will not be set aside unless they are clearly arbitrary, capricious or unreasonable (see Third Division Awards 19144, 23516, 21412, among others). In this case there appears to be no evidence to support Petitioner's conclusion that Claimant was, indeed, qualified and hence there is no basis for interfering with Carrier's decision, based upon the well-established principles indicated above. One additional comment must be made, however, in this dispute. It is apparent that Claimant is well on the way to becoming qualified as a Mobile Crane Operator. Therefore, it is this Board's recommendation that the next vacancy for this position to which his seniority entitles him, Claimant should be permitted to attempt to qualify once again for the position.

AWARD


Claim denied.



I. M. Lieberman, Neutral-Chairman



M. A. Christie, Employee Member



C. B. Goyne, Employer Member