

SPECIAL BOARD OF ADJUSTMENT NO. 280

Award No. 192
Case No. 279

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 T. L. Reed was unjustly disqualified as a Speed Swing Operator on July 26, 1983.
2. Claimant Reed shall be paid thirty-two (32) hours at his straight-time rate of pay and paid for the difference in pay he has received since July 26, 1983, and that he would have received as a Speed Swing Operator until he is allowed to return to the Steel Gang Speed Swing as Operator and the disqualification charges be removed from his records."

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, a Machine Operator, had been assigned as a Speed Swing Operator with a Rail Gang on July 5, 1983. He had not operated as a Speed Swing Operator before that time. He continued to operate the Speed Swing through July 25 and on July 26, 1983, he was disqualified. Following disqualification, a hearing was held at claimant's request on August 24, 1983. Subsequent to the hearing, Carrier reaffirmed its decision to disqualify claimant for the particular position.

Petitioner insists that during the approximately three weeks of assignment to the Speed Swing, claimant could not operate the equipment constantly since it was in such poor repair that it required servicing. In fact, the principal defense and position of the Organization is that claimant was not at fault for any problems he


had with the Speed Swing since the equipment was hardly serviceable at the time of the trial period. Since the equipment was broken down a good part of the time, it is also argued that claimant did not receive ample opportunity for qualification as provided for in the rules. Therefore, the Organization insists that the disqualification was unjust and the claim should be sustained.

Carrier cites Section VII, Article 17, of the Agreement in which it is indicated that employees have thirty days to qualify on certain positions and that the Regional Maintenance of Way Manager is the judge of the employee's qualification. In this instance the Welding and Steel Gang Supervisor testified at the hearing that he disqualified claimant because he felt that claimant was not a safe operator. Furthermore, it was observed that after three weeks claimant was such a poor operator that the Carrier felt that someone was going to get seriously hurt if he were allowed to continue to operate the particular piece of equipment. This conclusion was based on observations during the three-week period and the many incidents which occurred during that period resulting in damage to the Speed Swing as well as potential extreme danger to other employees.

It is noted that the Organization's defense in this dispute rests almost entirely upon the state of the equipment during the qualification period. The Organization's argument is based on the fact that no one could have operated the equipment properly in view of its condition. On the other hand, Carrier, while acknowledging that there may have been some problems with this old equipment, insists the under the observation of its officer, claimant did not perform satisfactorily during the three-week period in question. In fact, there were some serious incidents which could have resulted in major accidents due to claimant's inability to handle the equipment. It is this Board's view that it is clearly within the purview of Carrier to make determinations with respect to the qualification of employees. Under the circumstances of this particular dispute, even though the equipment was admittedly not in very good shape, there is no evidence to show that Carrier's decision to disqualify claimant was discriminatory or arbitrary. Furthermore, there is no evidence to support the contention that claimant was, indeed, qualified to operate the equipment if it had been in good condition. Thus, Carrier has the rightful responsibility for determining qualification and in this instance it made clear the basis for its decision to disqualify claimant, and the Board must abide by that conclusion and the decision will stand. Therefore, the claim must be denied.

AWARD


Claim denied.



I. M. Lieberman, Neutral-Chairman



M. A. Christie, Employee Member



R. O. Naylor, Carrier Member

Houston, Texas
January 14, 1985