

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

(Brotherhood Railway Carmen of the
(United States and Canada
Parties to Dispute: (
(Burlington Northern Railroad Company

Dispute: Claim of Employees:

1. That the Burlington Northern Railroad violated the current controlling Agreement by denying Carman J. W. Keithley his contractual rights to displace a junior carman as provided for in agreement rules.

2. That Carman J. W. Keithley be allowed to work industry truck job No. 1013. That he be compensated eight (8) hours at time and one-half the carman inspector's pro rata rate for each Sunday since January 20, 1982. Eight (8) hours at the double time pro rata rate for carman inspectors for each Monday since January 20, 1982. Eight (8) hours for each Wednesday and eight (8) hours for each Thursday at the carman inspector's straight time pro rata rate since January 20, 1982. This is a continuous time claim until satisfactorily resolved. That Carman Keithley be allowed to work job No. 1013 immediately.

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

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

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimant contends that Carrier violated the Controlling Agreement when it assigned the Carman Car Inspector, Position #1013, located at Springfield, Missouri, to a less senior employe. By way of background, he attempted to displace on this position when he was displaced for reasons of force reduction from his former position on January 20, 1982. He argues that Carrier's qualifying requirement that an applicant bidder must possess a chauffeur's license as condition of acceptance contravened Rules 30 and 50, and the normative selection practices observed on the property. In particular, he asserts that when the same position was advertised for bid on April 6, 1981, the remarks contained on the position bulletin did not mention that a chauffeur's license was required. Claimant avers that the testimonial notes submitted by other Carmen that a chauffeur's license was not required when they were hired to operate vehicles affirms his contention that he was denied his Agreement-provided seniority rights.

Carrier maintains that it properly denied him the position since he did not have a chauffeur's license when the position was to be filled. It observes that Missouri law requires possession of a chauffeur's license when trucks operate on the public streets. It argues that since Claimant did not have this license, and this requirement is unlike a situation where an Employee acquires qualifying experience on the job, his placement in the position would have violated the law. It asserts that he was not denied his seniority rights under Agreement Rule 30 since, simply speaking, he was not qualified for the job. It acknowledges that the chauffeur's license requirement was not stated in the April, 1981 position bid specifications, but argues that it cannot violate the law by assigning uncredentialed Employees to operate trucks on the public streets. It notes that another Employee was given 15 days to obtain a license when he bid for position on a wrecking crew, but avers that other crew members could drive the vehicle while operating on the highways. It observes that contrary to the situation when an Employee can perform the job while simultaneously acquiring a chauffeur's license, the instant case requires the incumbent to operate the vehicle immediately. It cited several National Railroad Adjustment Board decisions to support its interpretative position. For example, Second Division Award No. 5924 and Third Division Award No. 17360. Award No. 1 of Public Law Board No. 3071.

In considering this dispute, the Board concurs with Carrier's position on the narrow limited grounds that since the position required the incumbent to operate the vehicle immediately on the public streets, non possession of a chauffeur's license would subject Carrier to possible litigation. In a technical sense and consistent with the Awards cited by Carrier in its submission, it was not impermissible for Carrier to require as a precondition for the position the requirement that the successful bidder possess a chauffeur's license. This specified prerequisite is not analogous to a situation when a qualifiable Employee under Rule 17 can demonstrate by on the job training acceptable performance within an agreement qualifying period; rather the Employee was required to have up front the required chauffeur's license. Unlike the purported past practice cited by Claimant, the distinction herein is the immediacy of the position. If Claimant could have shown that it was possible for him to perform Position #1013 without violating the law, then his on site illustrations might have been persuasive. Carrier is not required to violate public law and by placing Claimant on the public streets without a chauffeur's license, it would palpably have violated the law. Its requiring this license was not unreasonable nor an abuse of managerial discretion. In Third Division Award No. 11297, the National Railroad Adjustment Board held that it was not an Agreement violation when a position requiring a chauffeur's license was filled by a Junior Employee; and the reasoning in that case is persuasive here. The Third Division, in pertinent part, stated:

"In this case all the Carrier asked was that the senior employee who desired the position assigned to drive the truck do so without violation of the State law and without subjecting the Carrier to being charged with violation of said State law by obtaining a chauffeur's license required by laws of the State of Missouri as a condition precedent to operation of truck over State public highways."

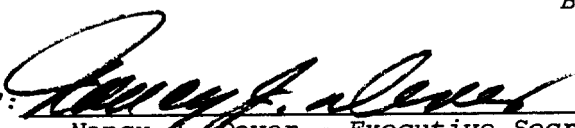
In this case, which is conceptually similar to Third Division Award No. 11297, we cannot conclude that a violation of the cited rules occurred.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 25th day of September 1985.