

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12891
Docket No. 12858
95-2-94-2-7

The Second Division consisted of the regular members and in addition Referee Charlotte Gold when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen -
(A Division of TCU
(
(Burlington Northern Railroad

STATEMENT OF CLAIM:

- "1. That the Burlington Northern Railroad Company violated the terms of Rules 13 and 26 of the current Agreement.
2. That, accordingly, the Burlington Northern Railroad Company be ordered to make Spokane Seniority District Carman Joseph Mellick whole; including but not limited to all overtime he was deprived of commencing August 11, 1992 and continuing until he is reinstated to the Colville, Washington assignment. We also claim moving expenses incurred by Carman Joseph Mellick for this assignment relocation from Pasco, Washington to Coleville, Washington."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

On July 29, 1992, Carrier posted the position of a road truck Carman with headquarters in Colville, WA. The bulletin indicated that applicants "Must have current Wash. State combination drivers license and be DOT qualified." By notice dated August 10, 1992, the position was awarded to Claimant, effective that date, "after Washington combination drivers license and DOT certification is verified."

Thereafter, Carrier learned that Claimant did not have a proper State license. (It is undisputed that he did not obtain it until August 14, 1992.) A new notice was prepared stating that Claimant was not qualified. Two weeks later, the position was given to the senior bidder with the required qualifications.

It appears from the record of this case that Claimant did not possess the basic minimum qualifications for applying for the position in question. The Organization suggests that Rule 13(h) is applicable, since it specifies that "Employees will be given cooperation by the Carrier in qualifying for positions secured in the exercise of seniority." It goes on to state:

"When new jobs are created or permanent vacancies occur in the respective crafts, the senior qualified employee applying shall be given preference in filling such new jobs and permanent vacancies. In event such employee is not disqualified within thirty (30) days because of incompetency, he shall be considered qualified for such position."

The Board does not read this language to mean that Carrier is required to cooperate in aiding employees to become minimally qualified. Rather, it has an obligation to allow the senior qualified bidder thirty days to display his or her competency in the position.

Although Carrier suggests in its submission that Claimant never obtained his DOT certification, there is no evidence in the record to support this assertion one way or the other. If he did possess it and only a license was lacking for a few days, some flexibility on Carrier's part may have been warranted. But given the clear contractual language before us, this Board has no authority to disregard the requirements of the Agreement or to grant Claimant leniency in this matter.

Form 1
Page 3

Award No. 12891
Docket No. 12858
95-2-94-2-7

AWARD

Claim denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 5th day of June 1995.