

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13992
Docket No. 13876
09-2-NRAB-00002-0800026

The Second Division consisted of the regular members and in addition Referee William R. Miller when award was rendered.

PARTIES TO DISPUTE: (
(Brotherhood Railway Carmen Division of TCIU
(Springfield Terminal Railway Company

STATEMENT OF CLAIM:

- “1. That the Springfield Terminal Railway Company violated the terms of our current Agreement, in particular Rule 26.1, when they failed to give a displacement to Carman Timothy Locke when his position was abolished.**

- 2. Accordingly, the Springfield Terminal Railway Company be required to compensate Carman Timothy Locke in the amount of eight (8) hours at the rate of time and one-half for each day he spent away from Waterville, ME. Also, the Carrier be required to compensate Carman Timothy Locke in the amount of 160 miles per day at the rate of 67¢ per mile and tolls of \$1.20 per day. This is the amount he had to pay to travel to Rigby Yard, S. Portland, ME, in violation of the Agreement.”**

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 were given due notice of hearing thereon.

It is the Organization's position that the Carrier violated Rule 26.1 on April 2, 2007, or shortly thereafter, when it would not allow the Claimant to displace a junior employee on Carman Position Nos. 49 or 54 at Waterville, Maine, because he did not possess a CDL Class A license. It argued that the Claimant was scheduled to receive his road test and truck permit test on April 11, 2007; thus, he could have become fully qualified within days of having exercised his displacement which the Carrier should have allowed. Because it did not allow the displacement it forced the Claimant to displace another employee at Rigby Yard, S. Portland, Maine, which is 80 miles away from his home point of Waterville, Maine. It requested that until the violation is corrected the claim be sustained as presented.

It is the position of the Carrier that it did not violate Rule 26.1 It argued that all New England states and various other states as far away as Florida and Arkansas within which it transports company materials, supplies, machinery and equipment require its drivers to have a CDL/A License. Because the Claimant did not have that license it could not allow him to displace a junior employee who had a license. The Carrier asserts that without this license, the Claimant was unable to perform all duties of Position Nos. 49 or 54 in Waterville and was not qualified in accordance with Rule 12.5(a). It stated that the Claimant was aware of the licensing requirement and should have made an effort to acquire the required license before he was faced with being furloughed or disqualified for lack of qualification. It concluded by stating that when the Claimant holds the requisite CDL/A license, he will be able to exercise his seniority rights on any position with that requirement that becomes available, but in the meantime the claim should be denied.

The Board thoroughly reviewed the record and finds that on the date the Claimant attempted to exercise his displacement of junior Carmen at Waterville, Maine, he did not possess the required CDL/A license. Rule 12.5(a) which is relevant to this dispute, states the following:

“Employees, after being awarded bulletined positions or exercising displacement right, will be allowed up to 20 working days in which to demonstrate their ability to competently perform the job. Employees will be given full cooperation of supervisors and trainers in their efforts to qualify for positions.”

In a very similar case (Second Division Award 13969 involving these same parties) a senior otherwise qualified employee was not allowed to displace a junior employee because he did not have a required hoisting license. The Board held:

“In accordance with Rule 12.5(a) Claimant was required to possess the requisite hoisting license after which he was entitled to the opportunity to demonstrate his ability to competently perform the job. Because the Claimant did not have the necessary state license he could not meet the first hurdle for displacement. If he had possessed that license he could have displaced and then been allowed the designated time to demonstrate his ability. Absent the state required license the Board finds and holds that the claim must be denied.”

The same logic and rationale expressed in Award 13969 is directly on point in the instant case. It is clear that the Claimant was required to possess a CDL/A license as a condition precedent to being entitled to the opportunity to demonstrate his ability to competently perform the job. Because he did not have the required license he could not meet the first hurdle for displacement. If he had garnered the required license before attempting to exercise his seniority he could have displaced and, thereafter, would have been entitled to demonstrate his competency to perform the position. Absent the required CDL/A license, the Board finds and holds that the claim must be denied.

AWARD

Claim denied.

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09-2-NRAB-00002-080026**

ORDER

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

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division**

Dated at Chicago, Illinois, this 11th day of February 2009.