

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 14054
Docket No. 13919
13-2-NRAB-00002-100004**

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

PARTIES TO DISPUTE: (**Brotherhood of Railway Carmen Division of TCU/IAM**
(**Springfield Terminal Railway Company**)

STATEMENT OF CLAIM:

- “1. The Carrier, Springfield Terminal Railway Company, violated the terms of the Controlling Agreement on November 14, 2008, when it abolished Carman Dale Reynolds' regularly held position at Rigby Yard, ME and forced him to travel to a position more than ninety (90) miles away at Lawrence, MA that he was not qualified to hold.
2. That now, as just and proper relief, the Carrier compensate Claimant in the amount of eight (8) hours pay at the applicable Carmen's pro-rata rate of pay, in addition to all out of pocket expenses for hotels (\$450/week) and tolls (\$16/week) for each day the Claimant is forced to work the aforementioned position.”

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.

The facts indicate that on November 14, 2008, the Carrier abolished the Claimant's position and he was advised to exercise his seniority to an open Carman position at Lawrence, Massachusetts, which required a state hoisting license that he did not possess. There is no dispute between the parties that the Claimant is a non-prior rights employee. Rule 26.1 states in pertinent part:

“. . . Non-prior rights employees will not be required to exercise displacement rights more than 90 highway miles from their last point worked.”

It is the position of the Organization that the Claimant should not have been forced to exercise his seniority to the open position at Lawrence for multiple reasons as follows:

- 1. The position at Lawrence was over 90 miles away and two days a week it worked at Ayer, MA, which was an additional 26 miles further.**
- 2. The position required a state hoisting license which the Claimant did not possess, thus he was not qualified.”**

The Organization relied upon Second Division Award 13969, which it contended stood for the principle that if the Claimant did not possess the necessary state license, he could not meet the first hurdle of displacement; thus the Claimant could not meet that first hurdle and should not have been forced to the Lawrence Carman position. It concluded that the Carrier erred in forcing the Claimant to exercise his seniority to Lawrence and it requested that the claim be sustained as presented.

It is the Carrier's position that the record verifies that there is no contractual basis for the claim. It argued that the Claimant is a non-prior rights employee who holds only system seniority rights, and despite the Organization's assertion, Lawrence is less than 90 miles from the last point that the Claimant worked at, which was South Portland, Maine. And because it was less than 90 miles away, the Claimant was required to fill the open position. It further argued that the Organization's reliance upon Second Division Award 13969 is misplaced because the instant case involved a vacant position and there was no displacement of a qualified employee as in the former dispute. According to the Carrier,

the Claimant was the "senior qualified employee" for the open position and it was not contrary to the Agreement to allow the employee more than 20 days to become fully qualified. It closed by asking that the claim remain denied.

The Board will first address the Organization's argument that the vacant/open position was not within 90 miles of the last point at which the Claimant worked.

While the claim was being handled on the property, the Organization repeatedly stated that the Claimant was required to fill an open position that was more than 90 miles away from the last point at which he worked, and on two days of the assignment he was required to work at Ayer, which is approximately 26 miles further away. The Carrier consistently countered that argument and stated that Lawrence was within 90 miles of the last point at which the Claimant worked, and was a location where he was required to exercise his seniority to hold a position; otherwise he would have forfeited his seniority. Our examination of the record evidence reveals that Lawrence is approximately 86 miles from South Portland. It was not disputed that the open position was headquartered at Lawrence and worked at that facility three days per week and two days at Ayer, which was beyond the 90 mile limitation. Rule 26.1 required the Claimant to exercise his seniority to any position that he could hold within 90 miles. The Board is not persuaded that the Carrier erred when it force assigned the Claimant to the vacant Lawrence position because it was headquartered within 90 miles of the last location at which the Claimant worked.

The Board will next address the Organization's contention that Award 13969 is precedential and should be followed in the resolution of this dispute, inasmuch as it allegedly prohibited the Carrier from forcing the Claimant to the vacant position because he did not possess the state required hoisting license. In Award 13969, a senior employee attempted to displace a junior employee. Therein 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."

In the case now before the Board the Organization argued that the Claimant was not qualified for the position he was force assigned to because he did not have the required state hoisting license. It asserted that Award 13969 involving the same parties is on point

and should be followed. It further asserted that in Award 13969, the Claimant was not allowed to exercise his displacement because he did not possess the required license. And following that reasoning, the Claimant in the instant case should not have been force assigned to the vacant position because he did not possess the hoisting license. The instant case is distinguishable from the facts set forth in Award 13969 because the prior case involved an attempted displacement of a fully qualified employee by an employee who was not qualified, whereas the instant case involved the filling of an open/vacant position for which there were no applicants. The Claimant did not possess a "hoisting license," however, our careful examination of Rule 12.5(a) reveals that such limitation did not prohibit the Carrier from electing to use an employee not fully qualified to fill an open/vacant position that had no applicants. Nor did it prohibit the Carrier from affording the Claimant more than 20 days to demonstrate his ability to competently perform the job. In view of all of the foregoing, the Board finds and holds that the claim must be denied.

AWARD

Claim denied.

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 30th day of April 2013.