

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 14075
Docket No. 13941
13-2-NRAB-00002-110012

The Second Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
(Southeastern Pennsylvania Transportation Authority

STATEMENT OF CLAIM:

- “1. That on or about August 25, 2011 the Carrier improperly disqualified Electric Traction Power Maintainer Kevin Noel, (employee #XXXXXX) from his power maintainer position, then barred him from work and subsequently dropped Mr. Noel from the employment rolls of the Authority. Such action is equivalent to dismissal from service.
2. That the Carrier improperly alleges Mr. Noel was not qualified to continue to hold a Power Maintainer’s position because of a temporary suspension of his Commercial Driver License (CDL). As a result of this unjust disqualification, the Carrier improperly removed Mr. Noel from service and terminated his employment relationship with the Authority.
3. Consequently, the Carrier’s arbitrary and unjust actions violate the Controlling Agreement, including but not limited to Article IV, Section 401 and Article II, Section 202. Accordingly, Article IV, Section 401(f) prohibits the Carrier from arbitrarily barring an employee from service without just cause. Article II, Section 202 License, provides in pertinent part: *‘If the loss of the license results from action not job related, every effort will be made to permit the employee to work. . . .’* (Emphasis added.) Thus, the Carrier is required to allow Mr. Noel to remain in service until his CDL is restored. Noel must be returned to service and compensated for all lost wages and benefits, including lost overtime, vacation credits, personal days, all health and welfare

benefits, railroad retirement credits and other negotiated benefits.”

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.

Claimant Kevin Noel was originally hired by the Carrier as a Trainee with a view to his progressing to become an Overhead Maintainer – First Class. At the time of his removal from the Authority’s employment rolls, he held a First Class rating. In December 2010, Claimant Noel was discharged from the Carrier’s service. He was returned to service on a last chance agreement in August 2011. Before actually returning the Claimant to work, the Authority conducted a background check on his driving record because he had been off the job for approximately eight months.

In the process of conducting that background check, the Authority discovered that the Claimant had had his driver’s license suspended from December 2010 to December 2011. In addition, the Commonwealth of Pennsylvania had imposed a lifetime Commercial Driver’s License (CDL) ban on the Claimant’s driver’s license. The Claimant had not reported either the suspension or the lifetime CDL ban to the Carrier, as he was required to do pursuant to the Carrier’s work Rules. As a consequence of discovering the lifetime ban, which prohibited the Claimant from holding a CDL, the Authority found him not qualified to be an Overhead Maintainer and dropped him from its employment rolls.

It is the position of the Organization that the Carrier relied on a minor requirement of an extremely complex job in order to disqualify the Claimant from his position as an Overhead Maintainer. It suggests that the Carrier should be required

to make reasonable accommodation for the fact that the Claimant had apparently lost his CDL. Accordingly, the Organization maintains that severing the Claimant's employment relationship with the Carrier for this first event constitutes excessive and harsh "discipline."

The Carrier counters that this is not a matter of "discipline." It asserts that the requirement that every Overhead Maintainer have a valid CDL is an absolute requirement for attaining or retaining that position. It points out that, particularly in the case of an accident or other event, all members of an Overhead Maintainer crew must be able to drive the vehicle carrying employees and their equipment to remote sites. The Carrier contends that because the Claimant no longer had a valid CDL, he was no longer qualified to hold the Overhead Maintainer position. Moreover, it notes that the Claimant failed to notify the Carrier of the loss of his CDL.

The Board carefully reviewed the record evidence, including all documents contained therein. The Board does not find that the Carrier exceeded its managerial discretion by requiring that Overhead Maintainers hold a valid CDL in order to retain their qualification for that position. It is clear that the work involved can be dangerous, and it is essential that any member of a crew be able to assume the driver's function, should the situation warrant it.

In the final analysis, the Board concurs with the Carrier that the Claimant's disqualification does not constitute "discipline" and is not the equivalent of "dismissal" as suggested by the Organization. In light of that fact, however, there must also be a method for the Claimant to re-qualify and present himself for a return-to-work physical within a reasonable period of time. After consideration of all of the facts and circumstances of this very unique case, the Board finds that the Claimant shall have one year to establish that he holds a valid CDL. If he is able to present such proof, and if he can show proof of participation in and successful completion of a rehabilitation program, he shall be reinstated without backpay, but with all other rights and privileges in accordance with the terms of the parties' Agreement. However his seniority shall be tolled from the time of his removal from service until his return to service. If he is reinstated, he will also be subject to random drug/alcohol testing at the Carrier's discretion.

The Claimant's one-year time-line for re-qualifying as an Overhead Maintainer shall begin as of the date this Award is adopted.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

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

Dated at Chicago, Illinois, this 22nd day of January 2014.