

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 39902
Docket No. MW-40636
09-3-NRAB-00003-080427**

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division –
(IBT Rail Conference**
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company (former Missouri
(Pacific Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed and refused to assign Mr. D. Urban to the truck operator position on Gang 9113 by Bulletin 3403 effective March 2, 2007 (System File MW-07-69/1474925 MPR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant D. Urban shall now be compensated ‘ . . . for all hours at the straight time rate of pay and all overtime, at the difference in pay between the Truck Operator’s rate of Pay and Welder Helper rate of pay from March 02, 2007 and continuing, and award the bid, on account the Union Pacific Railroad Company failed to award him the Truck Operator position on bid 3403, on Gang 9113 dated March 02, 2007.’”**

FINDINGS:

The Third 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.

At the time this dispute arose, the Claimant was a Welder Helper with a seniority date of May 28, 2004. The Claimant also had an established seniority date of April 14, 2006 as a Truck Operator in the Track Sub-Department on the System Rail Gang Roster (5600).

On February 16, 2007, through Bulletin No. 3403, the Carrier advertised a Truck Operator vacancy for Grapple Truck No. 64356 on System Gang 9113 with a closing date for bids set for February 26, and effective date of assignment set for March 2, 2007. The Claimant was qualified for the position and bid on it. However, on March 2, 2007, the Carrier cancelled the bid stating there were no qualified bidders.

The Claimant contacted the Carrier to determine why he was not awarded the position and was advised that he did not have an air brakes endorsement on his CDL. The Claimant advised the Carrier that he did have that endorsement. Further checking by the Carrier showed that, in fact, the Claimant had that endorsement.

According to the Carrier, it realized that an error was made and re-evaluated the applicants and made a correction determining that R. L. Johnson was the senior qualified employee with a seniority date of March 31, 2006 (14 days greater than the Claimant). The Carrier then assigned Johnson to the Grapple Truck position.

Were those the only facts, the Carrier would be correct and that a senior qualified employee - Johnson - ultimately got the position therefore requiring that this claim be denied. However, the problem the Carrier has is that there was an error admittedly made through the Carrier's determination on the initial bidding that there were no qualified bidders, when in fact, the Claimant was qualified. There is no definitive showing that qualified employees with greater seniority than the Claimant bid on the position as posted on the February 16, 2007 bulletin. According to the Organization, the greater seniority qualified employees did not bid on that bulletin, but bid later. Whether there was a later bid or merely error, the fact remains that the Claimant was qualified and there is insufficient evidence to

show that more senior qualified bidders sought the position as posted before the closing date of the February 16, 2007 bulletin. That being the case, we must find the claim has merit and that the Claimant should be made whole.

AWARD

Claim sustained.

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 Third Division**

Dated at Chicago, Illinois, this 31st day of August 2009.