

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 13013
Docket No. 12901
96-2-94-2-48

The Second Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

PARTIES TO DISPUTE: (Sheet Metal Workers' International Association
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(Union Pacific Railroad Company

STATEMENT OF CLAIM:

"A. The Carrier violated the provisions of the controlling agreement and in particular Rule 18, Rule 27, Rule 31, Rule 32, Rule 42 when they did not allow senior employee, Richard D. Helms, to displace junior employee, D. E. Oehm, because of force reduction.

B. That Water Service Mechanic Richard D. Helms be awarded all wages due plus overtime received by junior employee and all benefits due by agreement beginning March 19, 1993 to continue while junior employee remains working on Water Service job and Richard D. Helms remains furloughed on Roster 3000 043."

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.

Claim of the Organization is that the Carrier violated the Agreement when it refused to permit Claimant the right to properly utilize his seniority. The facts are that the Claimant's Water Service position was abolished and he attempted to displace a junior employee at the Water Treatment Plant. The record is clear that the Carrier denied the displacement.

The Organization rests its claim on background, Rules and past decisions (Second Division Awards 10657, 11633). The Board notes that the Claimant had six years experience working in the Water Treatment Plant, was a long term employee with clear seniority and had properly complied with timely notice to exercise seniority. A study of the Rules and Awards cited by the Organization confirm seniority rights to displace, if properly qualified.

The Board denies the claim as the burden of proof that the Claimant held proper qualifications has not been met. The Carrier denied the claim as the Claimant did not hold a proper driver's license. Organization's assertions that such is not required lack substantive proof. The Organization's focus on the Classification of Work Rule is misplaced as that does not list requirements, but only positions covered by the Agreement. Nor is the Organization's focus upon requirements at Portland, North Platte, and other locations proof that the disputed position had no such requirement.

Central to this Board's decision is the Carrier's denial of displacement due to Claimant lacking appropriate qualifications. Carrier denied the initial Claim as the requirements of the position included a valid driver's license. It proffered additional evidence supporting that position including the need for a commercial drivers license for operating a truck required on the job, as well as the lack of a required state permit. The Board finds no proof in this record that the qualifications set by the Carrier for the disputed position were unreasonable or capricious. A threat made against the Claimant is not sufficient proof that the Carrier set qualifications in an arbitrary manner to circumvent the Agreement or for discriminatory action against the Claimant.

Accordingly, the claim must fail. The loss of a license by the Claimant removes his ability to qualify for a position whose skills require an operator's license. The Organization had the burden to prove that this was not a prerequisite for the disputed position. That burden has not been met. Under these instant circumstances, the Claimant is disqualified from exercising seniority to this position which requires driving.

AWARD

Claim denied.

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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 10th day of July 1996.