

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13181

Docket No. 13004

97-2-95-2-27

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

**(Brotherhood Railway Carmen, Division of
(Transportation Communications International Union**
PARTIES TO DISPUTE: (
(Chicago, Central & Pacific Railroad Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (File No. 95C-301-35-9479) that:

- 1. The Chicago Central & Pacific Railroad Company violated Rules 19 and 35 of the controlling Agreement on February 8, 1994 when Carman D. Schneiderman was improperly disqualified and removed from his bulletined assignment at Freeport, Illinois.**
- 2. The Chicago Central & Pacific Railroad Company must make Mr. D. C. Schneiderman whole for all time lost as a result of his erroneous disqualification. Such payments should include but not be limited to wages, overtime holiday pay, vacation pay, health incentive pay, and medical coverage.”**

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.

This claim arises from Carrier's disqualification of Claimant from his position as Carman at Freeport, Illinois, on February 8, 1994 on the basis that its insurance company would no longer provide coverage for him to drive a company vehicle due to his current driving record. The claim also protests Carrier's removal of Claimant from his position and subsequent disqualification of him from other positions he attempted to displace to on the basis of his "uninsurability" without the holding of a disciplinary hearing as required by Rule 35.

The Organization argues that Carrier unilaterally and arbitrarily added a requirement of insurability by its insurance provider which is neither supported by the language of the Agreement nor the written requirements of Claimant's position. The Organization contends that Claimant meets the requirements of his Carman position as he has a valid drivers license, and that employees are not responsible for Carrier's insurance. It further notes that Carrier is limited by Rule 19 to disqualifying an employee within his 15 day trial period. The Organization also argues that the removal of Claimant from his position was disciplinary and required the holding of a Hearing under Rule 35, relying upon Public Law Board No. 5068, Award 47.

Carrier argues that Rule 19 does not restrict it from subsequently disqualifying an employee who no longer possesses the requisite requirements for the position. It notes that Carrier assisted Claimant in receiving a Restricted Drivers' Permit after his license was revoked due to his driving record including four convictions of DUI. Carrier states that it chose not to disqualify Claimant when he did not meet the license requirement for his position, but did not waive its right to do so in the future. Carrier contends that when it was advised that Claimant was no longer insurable it determined that he was no longer able to perform the basic functions of his job, and exercised its right to disqualify him.

Carrier argues that it was not required to take the substantial liability risks associated with having Claimant drive its vehicles without insurance, and that its decision to disqualify him was reasonable. It contends that inherent in the valid driving license requirement is an insurability requirement. Alternatively, Carrier argues that

if such requirement was added, it was a reasonable one and within management's rights not limited by the Agreement, relying upon Public Law Board No. 1723, Award 1; Second Division Awards 13013, 12347, 11505; Third Division Awards 31156, 29740, 29127, 28598, 27981, 25212, 21653, 19404, 17360. Carrier also notes that the Organization rejected a settlement offer made in this case, and that this was done at Claimant's peril, relying upon Second Division Award 7397; Third Division Awards 28645, 28076, 14443; First Division Award 22123.

A careful review of the record in this case convinces the Board that the Organization failed to sustain its burden of proving that the Agreement has been violated. Neither Rule 19 concerning original qualification for a position after a 15 day trial period, nor Rule 35 concerning the requirement of a Hearing prior to the issuance of discipline are applicable in this case, nor restrict Carrier's right to disqualify an employee for failure to possess reasonable job requirements. We are of the opinion that Carrier's action in disqualifying Claimant due to his uninsurability was not a disciplinary action, as he continues to maintain his seniority which he can exercise according to his current qualifications. Thus, the fact that a Hearing was not held prior to Carrier's disqualification action and removal of Claimant from his Carman position at Freeport is an insufficient basis upon which to sustain this claim. We find Public Law Board No. 5086, Award 47 to be distinguishable on its facts.

The issue to be determined in this case is whether Carrier's qualification of insurability is reasonable. The Organization does not contend in this case that the requirement of possession of a valid driver's license is unreasonable, as was the situation in many cases relied upon by Carrier. Neither does Carrier contend that after Claimant secured his Restricted Drivers Permit permitting him to drive to and from work and within a designated area at work that Claimant did not technically meet the "valid drivers license" requirement permitting him to perform his job functions. Rather, Carrier contends that inherent in the possession of a valid drivers license requirement is the understanding that such employee will be insurable, and that its exercise of management prerogative to disqualify employees when they become uninsurable is reasonable based upon the attendant risk of liability involved.

There is no dispute on this record that Carrier's insurance company determined that Claimant was uninsurable based upon his prior driving record, which formed the basis for the revocation of his driver's license. It is also clear that the sole reason for Claimant's disqualification was this determination of uninsurability. The Board has

previously held that the Organization bears the burden of establishing that Carrier's assessment of an individual's qualification was unreasonable; see Third Division Award 28598. Based upon the specific facts of this case, which include Carrier's efforts on behalf of Claimant to aid him in securing a driving permit so that he could remain on the job in the face of the revocation of his driver's license, as well as its consideration of the liability risk factors involved in permitting Claimant to operate one of its vehicles without insurance coverage, we conclude that the Organization has not met its burden of proof herein. Claimant's prior driving record provided a reasonable basis for the insurance company to withdraw its coverage from him, and Carrier cannot be held to be obligated to either permit Claimant to operate without insurance or attempt to secure him alternative coverage. Under such circumstances, the claim must fail.

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 23rd day of December 1997.