Award No. 16753
Docket No. MW-17087

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Arnold Zack, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1-a) The Carrier violated the Agreement when it disqualified Laborer Francisco Niave as a truck driver without just and sufficient cause.

(1-b) The Carrier further violated the Agreement when it assigned an employe junior to Francisco Niave as truck driver during the period April 18 through April 29, 1966.

(2) Laborer Francisco Niave now be allowed the difference between the laborer's rate and the truck driver's rate of pay (.06 cents per hour) for eighty (80) hours because of the violation referred to in Part (1) of this claim. (System file MW-17-16/D-7-40.)

EMPLOYES' STATEMENT OF FACTS: The truck driver regularly assigned to the North Yard Section was scheduled to begin his ten (10) day vacation period on April 18, 1966. Claimant Francisco Niave, regularly assigned as a laborer on said section, requested that he be assigned to drive the truck during the regular driver's vacation absence. Even though the claimant possessed a valid chauffeur's license and had previously been assigned to drive the truck during the regular driver's vacation as well as on other occasions, the Carrier refused his request and assigned a junior laborer to drive the truck.

The claimant protested the assignment of the junior laborer to General Chairman Ancell who, on May 3, 1966, filed a letter of claim presentation with Division Engineer Black. The claim was denied within a letter dated May 10, 1966, wherein Engineer Black contended "This man does not possess sufficient fitness, ability and experience to qualify as a truck driver as provided in Supplement G (7) and claim is declined."

Upon being advised of his disqualification as a truck driver, the claimant requested that he be afforded an investigation within a letter reading:

facts as to your disqualification as a truck driver in the Maintenance of Way Department, the disqualification is sustained.

/s/ W. J. Holtman
W. J. Holtman
Superintendent"

Notice of appeal from the decision of the Division Superintendent was not made within the required ten day period. Actually, the decision of the Division Superintendent sustaining the disqualification of Mr. Niave was never appealed.

OPINION OF BOARD: Claimant F. Niave, a Section Laborer in Carrier's North Yard at Denver, Colorado requested assignment as a truck driver during the regular truck driver's vacation absence. Carrier declined the request under the fitness, ability and experience of Supplement G (7) of the parties' Agreement assigning a junior laborer to drive the truck, and giving rise to the instant dispute. An investigation was held on May 31, 1966. On June 7, 1966 Claimant was notified that the hearing resulted in his disqualification being sustained.

The Organization contends that the claim was properly appealed under Article V of the 1954 Agreement. On the merits, it argues Claimant has a valid chauffeur's license, that he has previously driven the truck with competence including a period of an earlier vacation and that his prior performance justified his filling the driver's position in the instant case, under the terms of Supplement G of the parties' Agreement. It asserts that there was insufficient evidence at the hearing to conclude that Claimant no longer possessed fitness and ability to drive the truck, noting that he is capable of reading label tags, and of identifying various weight track bolts as well as any other employes, and that he was not responsible for the damage done to the winch during his earlier driving of the truck.

The Carrier argues that the claim must be dismissed first because it is substantially different from that handled on the property and second because the Organization failed to give notice of appeal from the decision following the hearing within 10 days as required by Rule 10 (c). On the merits the Carrier asserts that Supplement G gives it the sole right to determine the qualification requirement in this dispute. In this case it is clear that Claimant was unable to identify track material essential to his job, and unable to effectively operate the winch that is also a part of the driver's job. Additionally it notes that he failed to safely protect the truck by flares during an earlier breakdown.

There is no question that this dispute is properly before us. First, the claim at issue as currently phrased is not significantly different from that handled on the property. It adequately encompasses the same cause of action. Secondly, Organization's claim was timely appealed under Article V of the 1954 Agreement as this Board has held in similar situations brought before us in the past. (Award 8495.)

Turning to the merits it is clear that Section (7) of Supplement G gives the Carrier the authority to determine whether an applicant to a position as truck driver possesses sufficient fitness, ability and experience. The determination of qualification is left to "the opinion of the authorized Company repre-

sentative." There is nothing in the paragraph which suggest joint determination or even consultation on fitness, ability and/or experience. Even the examination which may be provided by the Carrier is to be the exclusive creation of the company representative. Carrier clearly had the right to determine fitness, ability, and experience.

In the light of the specific language of Section (7) and in view of the testimony as to Claimant's current capabilities and his prior experience on those occasions when he did drive the truck, we find the Carrier acted reasonably.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 8th day of November, 1968.

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