

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

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employes
(Denver and Rio Grande Western Railroad Company

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

(1) The Carrier violated the Agreement when it failed and refused to permit Mr. J. V. Smith to displace junior employee M. Alamanza effective October 10, 1986 (System File D-86-54/MW-14-87).

(2) As a consequence of the aforesaid violation, Mr. J. V. Smith shall be compensated for all wage loss suffered, including overtime, as follows:

'Commencing October 10, 1986, at 4:00 P.M. thru October 21, 1986 at 7:30 A.M. claimant is for eight (8) hours at the truck driver straight time rate of pay, Monday thru Friday and any overtime at the overtime rate worked by Mr. Alamanza outside of the regularly assigned work hours.

Commencing on October 21, 1986, at 7:30 A.M. thru October 24, 1986, at 4:00 P.M. claimant is due the difference between that which he was compensated at the trackman's rate of pay and that which Mr. Alamanza was compensated at the truck driver's rate of pay inclusive of any overtime claimant was deprived of.

Commencing on October 24, 1986, at 4:00 P.M. claimant is again due all wage loss suffered until violation ceased.'"

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 employees 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.

On December 5, 1986, the General Chairman filed a Claim on behalf of the Claimant which reads as follows:

"The System Committee of the Brotherhood claims in behalf of Mr. J. V. Smith Social Security Number 522-86-1603, Payroll Number 116038, who is a trackman with a seniority date of June 23, 1975 that the Agreement was violated when Carrier placed Claimant on force reduction and would not allow him to displace a junior trackman M. Alamanza, seniority date April 5, 1978. It is respectfully requested that Claimant now be compensated for all wage loss suffered, including any overtime.

Claimant and Mr. Alamanza were both assigned to Carrier's extra gang under Foreman Orenday. Carrier served notice of force reduction to be effective end of shift October 10, 1986. On October 6, 7 and 8, 1986 at North Yard in Denver, Claimant spoke with General Roadmaster Gonzales and supervisor of equipment about displacing Mr. Alamanza who was assigned to the truck assigned to this extra gang. Claimant was advised that he would need a Class B Chauffeurs' license to operate this truck. Claimant requested the opportunity to take the test for such a license but Claimant was not afforded the opportunity nor was he allowed to displace.

Supplement 3 (6) of the Agreement provided that in order for an employe to be a truck driver he must produce a license valid for the localities where he will operate the company truck. This company truck was and is to be operated in Colorado. Colorado State Law provides that the following drivers license requirements: Class 'C' license: can operate up to and including a 2 axle vehicle and may pull a trailer up to 10,000 pounds gross weight; Class 'B' license: can operate up to and including a 3 axle vehicle and may pull a trailer up to 10,000 pounds gross weight.

Claimant has the Class 'C' license required to operate the truck which he sought to displace on.

Since Claimant was not allowed to displace Mr. Alamanza from the truck on October 10, 1986, he displaced as a track a laborer on Mr. Matrel-laro's extra gang on October 21, 1986, and laid off October 24, 1986. He then placed as a track laborer on October 27, 1986 on extra tie gang at Winter Park and laid off October 31, 1986. He called Roadmaster Ruple on October 30 or 31, 1986 and again advised that he wanted to displace Mr. Alamanza from the truck. Mr. Ruple advised that Mr. Alamanza was likewise laid off on force reduction. Mr. Alamanza was not off he was with the extra gang at Colorado Springs, Colorado."

According to the Organization, this dispute centers on the Carrier's attempts to keep a junior employee working during a force reduction while it forced Claimant to go on furlough. Carrier's arguments notwithstanding, the Organization maintains that Claimant was fully qualified to displace on the position in question and that, furthermore, Carrier was aware that Claimant was in possession of the proper license required by State Law to operate the truck involved here. Alternatively, the Organization submits that Carrier had assisted other employees in obtaining their licenses in the past and that Carrier arbitrarily and unreasonably refused to afford Claimant such assistance. Recognizing that Carrier may require that employees demonstrate the requisite fitness and ability to fill a position, the Organization contends that such requirements must not be arbitrary or capricious. Here, Carrier abused its discretion by refusing to allow Claimant to fill the position, the Organization asserts.

Carrier's statement of facts as set forth in its Submission indicates that Claimant received a notice of force reduction effective October 10, 1986. Just prior to that date, Claimant had inquired about placing on the District Truck Driver position. He was advised by the Supervisor of Work Equipment, that in view of his past driving record and the fact that he had his driver's license suspended in July, 1982, and was not reinstated until March, 1986, it was necessary to prove his responsibility in driving and ability to maintain a clear record. In addition, Claimant did not possess a Colorado Class "B" Chauffeur's license, which is required to operate the Division truck. According to Carrier, Claimant was told that at such time that he proved his responsibility, he would be allowed to take Carrier's test for operating a Carrier truck.

There is no dispute that Claimant was subsequently allowed to take the test and was placed upon the Truck Driver position on April 3, 1987. In the interim, Claimant displaced as a laborer on an extra gang as a result of the force reduction.

Carrier contends that it acted properly and responsibly by not allowing the Claimant to take the Carrier's test to place on the Truck Driver's position. Claimant's license had been revoked for 4 years and had been reinstated for only a period of six months when Claimant wanted to place on the Division Truck Driver position. In Carrier's view, its concerns regarding Claimant's driving abilities were valid and it was entirely proper and reasonable to wait until Claimant had secured a Class "B" license on March 2, 1987, before allowing him to place on the Truck Driver position on April 3, 1987.

After review of all the record evidence in its entirety, we find that the Organization has not met its burden of proving that Carrier violated any rights of the Claimant or Agreement Rules when it assigned a junior employee to a Truck Driver position on October 10, 1986. Supplement 3 (7) of the Agreement provides:

"A successful applicant for assignment to a position as truck driver must, in the opinion of the authorized company representative, possess sufficient fitness, ability and experience; and he must successfully pass such examinations as said representative may prescribe for the purpose."

As the record makes clear, Carrier's reason for refusing to allow Claimant to displace the junior employee from the District Truck on October 10, 1986, was two-fold. First, he did not possess a Class "B" license. Second, Carrier was of the view that Claimant did not possess sufficient fitness, ability and experience to assume the position, since at that time he had only recently had his driver's license reinstated after a four year period of revocation. We do not find either stated reason to be unreasonable. As this Board has stated in previous Awards, Carrier must be the judge of the ability of an employee to perform a certain job, and the Organization bears the burden of proving that Carrier was unreasonable in its assessment of an individual's qualifications. (See, e.g. Second Division Award 11505.) In our view, that burden has not been met here. Carrier is under no obligation to put an employee in a driving position without the necessary license, and in view of Claimant's past driving record, we cannot find Carrier's determination that he was unqualified to be unreasonable. Accordingly, we must rule to deny the Claim.

A W A R D


Claim denied.

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Award No. 28598
Docket No. MW-28389
90-3-88-3-162

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of October 1990.