

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31257
Docket No. MW-30901
95-3-92-3-730

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
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(Consolidated Rail Corporation

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

- (1) The Agreement was violated when the Carrier posted Bulletin No. 18 advertising a trackman casual driver position requiring the applicants to have a vehicle operator's license for vehicles weighing 26,000 lbs. or more (System Docket MW-2099).
- (2) As a consequence of the violation referred to in Part (1) above, "... the requirement for a Trackman Casual Driver position to have license to operate a 26,000 lb. vehicle be dropped from all future bulletins."

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 waived right of appearance at hearing thereon.

The Carrier issued Bulletin Number 18, by date of April 15, 1991, for Trackman-Casual Driver positions. Among the qualifications listed, the Bulletin stated that the successful applicant "... must have a valid drivers license that allows applicant to operate vehicles 26,000 lbs. and above."

By letter dated June 1, 1991 the Organization alleged a violation of the Scope Rule and Appendix A of the Agreement. Specific thereto, the Organization maintained that the required license to operate a 26,000 pound vehicle was beyond the Agreement of the parties when the position of Trackman-Casual Driver was created. The Organization's argument throughout the on-property dispute centers upon the March 5, 1982 Memorandum explaining the Trackman-Casual Driver position.

The Carrier denied the applicability of the Scope Rule or the Memorandum in limiting the Carrier's right to set qualifications. It is the Carrier's position that it did not violate the Agreement because it awarded the position from the Trackmen's roster. The Carrier argues that nothing in the Agreement or the specific March 5, 1982 Memorandum restricts the Carrier from determining the size of the vehicle driven or the license that may be required by the state to operate the equipment.

After careful review, the Board finds insufficient proof to sustain the Organizations's burden. There is no language in the Scope Rule limiting the Carrier in the qualifications it may require. Considering the qualifications the Carrier introduced, there is no probative evidence presented by the Organization to prove the qualifications were unrelated, unnecessary, inappropriate or arbitrary. Amendment No. 3 of the March 5, 1982 Memorandum, which created the Trackman-Casual Driver is not found by this Board to be as narrow as the Organization suggests. That Amendment does not mention vehicle size or limit the Trackman-Casual Driver position to operate only specifically named equipment. A study of the Memorandum demonstrates only that it creates the position of Trackman-Casual Driver, and among the specifics includes that "Trackman seniority will govern in the awarding of such jobs." There is no limitation supporting this Claim. Accordingly, the Carrier did not violate the Agreement. The Claim is denied.

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 Third Division

Dated at Chicago, Illinois, this 1st day of November 1995.