

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32353
Docket No. MW-31922
97-3-94-3-288**

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

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(The Kansas City Southern Railway Company**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier improperly disqualified Mr. J. B. Weed from his position of welder helper on November 20, 1992 (Carrier's File 013.31-465).**
- (2) As a consequence of the violation referred to in Part (1) above, the Claimant shall be returned ‘... to his former position of Welder Helper, that he be paid for the difference in pay commencing November 20, 1992, and continuing until such time as he is restored to his former position of Welder Helper...’ ”**

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 were given due notice of hearing thereon.

The Organization filed this instant claim following the Claimant's notification that he was to exercise seniority due to disqualification as a Welder Helper. The Claimant was notified by letter dated November 20, 1992 that due to a DWI, he no longer had a valid Commercial Drivers License (CDL) and would be unable to drive a Company vehicle. The Organization asserts that Claimant was disciplined without an Investigation and forced to exercise seniority as a B&B Laborer. Even further, the Organization argues that there is no Rule that requires anyone other than the driver to hold a valid licence and certainly not the Welder Helper position. The Organization argues that the CDL has absolutely nothing to do with the Claimant's ability to properly perform the duties associated with his Helper position. As such, he was unilaterally removed in violation of the Agreement.

The Carrier rejects the Organization's arguments and rests its position on the fact that the law requires a CDL. As the Claimant lost his licence, he lost his ability to properly perform his duties. The Carrier asserts that the Claimant was never disciplined, but was correctly disqualified from the position of Welder Helper due to his failure to maintain the required drivers licence. Such license is a matter of law and not a matter of the Carrier's discretion. The Carrier states that if the Claimant ever again obtained his CDL the position of Welder Helper would then be obtainable, but not without the necessary qualification. The Carrier steadfastly denies any Agreement violation.

The Board can find no probative evidence to discount the Carrier's position that the CDL is required. There is no dispute that the Claimant lost the licence. The Carrier stated:

"When the Welding Foreman is off on vacation and/or personal leave days the Welder Helper steps up to the position of Welding Foreman. When this happens then the Welder Helper must be able to operate company vehicle. Also, if there is an emergency or for any reason the position of Welder Helper must be able to operate vehicle. These vehicles weigh over 26,000# and the Federal Government has mandated that anyone who operates a vehicle over 26,000# MUST have their Commercial Drivers' License."

The Board finds no rebuttal. There is no evidence which refutes the Carrier's position, supra. Under these instant facts, the claim must fail. There is no proof that the Carrier's actions are a violation of any Rule of the Agreement.

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 13th day of November 1997.