

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33151
Docket No. SG-33377
99-3-96-3-883**

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

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Wheeling & Lake Erie Railway Company**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Wheeling & Lake Erie Railway Co. (WLE):

Claim on behalf of T.S. Nicklin, G.R. Miller, J.F. Wehner, V.L. Hannahs Jr., J.T. Worrell and R.P. Southwood for removal of the driving restriction placed on them effective August 7, 1995, account Carrier violated the current Agreement, particularly the seniority rules, when it disqualified the Claimants from any positions which included the operation of a Carrier vehicle. General Chairman’s File No. 231/950927A. BRS File Case No. 10057-WLE(M).”

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.

Each of the Claimants held a "CDL Qualified" position as described in the following portion of the Classifications Rule of the controlling Collective Bargaining Agreement:

"RULE NO. 2 - CLASSIFICATIONS

U. CDL Qualified Positions: An employee who, in addition to his regular duties, is designated to drive the over-the-highway vehicles and who will be required to secure and maintain a Commercial Driver License (CDL)."

The Agreement provides further with respect to such positions, as follows:

"RULE NO. 3 - CDL QUALIFIED

A. The Carrier will establish positions that shall be designated to drive the over-the-highway vehicles. Employees assigned to positions designated as vehicle operator as part of their duties will be required to secure and maintain a Commercial Driver's License.

B. Employees assigned by bulletin to operate motor vehicles under this agreement will be reimbursed by the Carrier for the cost of securing and maintaining such license or permit and expenses incurred in securing such license. Such employees shall be permitted to secure such license or permit during regular assigned working hours without loss of time or pay.

C. The Carrier will be responsible for the condition of all vehicles and shall be expected to assure that they are maintained in a safe operating condition at all times. Employees covered by this agreement will not be permitted or required to operate or ride upon any vehicle assigned by the Carrier unless and until such employees are fully covered by proper insurance to protect them for liability in case of an accident, property damage, or death. All fines incurred which are not the result of operator negligence will be paid by the Carrier. This shall not relieve the employee of the responsibility of notifying the carrier of needed repairs.

D. Any employee assigned to operate a motor vehicle under this rule who cannot secure the proper license or permit to operate the vehicle and

employees whose license or permit are revoked for any reason will be permitted to exercise a displacement right in accordance with displacements Rule No. 18.”

Each Claimant is a licensed Operator of his/her private vehicle on which s/he maintains mandated insurance coverage. After obtaining the necessary CDL and permits, each Claimant regularly operated Carrier-owned vehicles on which the Carrier provided the mandated insurance coverage through Grange Mutual Casualty Company (hereinafter “Grange”). The record shows that in July 1995, the Carrier was notified by Grange that effective July 12, 1995, a number of its employees, including the three named Claimants, would no longer be covered by the Carrier’s motor vehicle insurance policy. The reason for that underwriting decision by Grange was due to discovery that each of the dropped employees, including Claimants, had personal driving records which made them a poor insurance risk.

Upon learning that Claimants had been removed by Grange from coverage under the insurance policy covering its Company-owned vehicles, Carrier’s Roadmaster sent Claimants a copy of the following letter, dated August 7, 1995, notifying them they were no longer authorized to drive any of the Carrier’s vehicles:

“Our insurance company has notified us that due to your past driving record they refuse to insure you for driving any company vehicles.

Therefore, please be advised that you are not authorized to drive any Wheeling & Lake Erie Railway Company vehicles. We consider this a very serious matter and expect your cooperation. Any violators will be considered insubordinate.”

By letter dated September 27, 1995, the Organization’s General Chairman filed a grievance on behalf of the Claimants requesting that the Carrier’s August 7, 1995, letters be rescinded and claiming that the Carrier had violated Rule 2(U) of the Agreement, supra. Upon careful consideration of the undisputed facts of record and the controlling Agreement language, we find no basis upon which this claim properly can be sustained. The Organization asserted but never provided proof that each Claimant had a “good” driving record and that, contrary to the determination by Grange, none was at “high risk” for motor vehicle insurance. The fact that each Claimant may have been able to obtain State-mandated personal motor vehicle insurance does not refute the

fact that each was deemed an unacceptable insurance risk by the underwriters of Carrier's insurance policy for Company-owned commercial vehicles. Moreover, the fact that each continued to maintain the CDL is of no probative value regarding insurability on Carrier's commercial vehicle policy because under Chapter 4506 of the Ohio Motor Vehicles Law ability to renew a CDL is not dependent upon overall driving record but only the record while driving a commercial motor vehicle.

Neither the language of Rule 2.U, Rule 3 and the seniority provisions of the Agreement, nor any reasonable inference, therefrom requires Carrier to purchase high risk commercial vehicle insurance coverage for Claimants so they can continue to function in their "CDL-qualified" positions. To the contrary, by reasonable and necessary implication, maintenance by the employees of continuous insurability under Carrier's Company-owned vehicle insurance policy is an implied condition of entitlement to function in such a position. See Public Law Board No. 2752, Award 4.

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 25th day of March 1999.