

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36992
Docket No. MW-36072
04-3-00-3-248

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Soo Line Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when, on December 10, 1998, it awarded Mr. M. Abercrombie the position of foreman on B&B Crew 616, instead of assigning Mr. G. D. Day in recognition of his superior seniority (System File R1.373/8-00375).
- (2) As a consequence of the violation referred to in Part (1) above, the Carrier must now correct Bulletin No. 268A, dated December 10, 1998, to properly award the B&B Crew 616 foreman assignment to Claimant G. D. Day and the Carrier shall allow the Claimant any seniority rights and all other rights and benefits lost to him as a result thereof, including compensation for all lost wages beginning December 10, 1998 and continuing.”

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 material facts show that the November 20, 1998 bulletin for Foreman on Crew 616 was awarded on December 10, 1998 to M. Abercrombie - an employee junior to the Claimant. That position had previously been bulletined on September 16 and October 26, 1998 and closed because of lack of qualified bidders, which included the Claimant.

The bulletined Foreman's position on Crew 616 required the applicant to have a commercial driver's license - which the Claimant did not have, but Abercrombie did. This claim followed because the Claimant did not receive the position.

Because the Claimant did not have a CDL, no Rule violation can be found.

The factual assertion by the Organization that the Claimant was told that he did not need a CDL is in dispute and, therefore, does not change the result. Nor does the fact that the Claimant obtained an instruction permit change the result. The Foreman's position required a CDL, not a permit. Given the position in dispute, the requirement for the successful applicant to have a CDL was a reasonable one.

The Claimant's prior work on the gang also does not change the result. The Carrier determined that the position required a CDL. The Claimant did not have one. The claim therefore lacks merit. See Third Division 26295:

"The record is clear that the Claimant did not meet the required qualifications for the job in that he did not possess a valid driver's license. Although the Organization argues that the Claimant

worked the same job on numerous occasions during the previous seven years and did not possess a driver's license during that time, the record contains no evidence that the Claimant performed the identical job to the one at issue here. Moreover, the Carrier retains the right to set the qualifications for a job; and if the Carrier determines at some point that it wants to have only employees who possess valid driver's licenses in the particular position, that determination is fully within its managerial rights, as long as there is a rational basis for it. In this case, it is not unreasonable for the Carrier to want a person who can drive in the Track Foreman's position. Consequently, even if the Claimant had performed the identical job in the past, there is nothing to preclude the Carrier from altering the job qualifications and requiring that any applicant who is to be selected have a valid driver's license. The Organization contends that other employees do the driving for that position; however, this Board finds that there is nothing to preclude the Carrier from changing that past practice and requiring that all people assigned to that position be able to drive."

Third Division Award 36286 cited by the Organization is not persuasive. There, the employee obtained his CDL less than 30 days after he was advised that he was being removed from his job as a Grinder Operator due to lack of a CDL which prevented the employee from operating two of the gang's five trucks. According to the Board, "[t]he latter removal was his initial notice of a need for a CDL." That is not this case. The Claimant was long aware of the requirement that he needed a CDL. Prior bids of September 16 and October 26, 1998 (which were closed for lack of qualified bidders, which included the Claimant) specified the requirement of the need for a CDL. The Claimant was not caught unaware of the requirement when the same requirement again appeared in the November 20, 1998 bulletin in dispute.

AWARD

Claim denied.

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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 18th day of May 2004.