

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37766
Docket No. SG-36700
06-3-01-3-195

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

(Brotherhood of Railroad Signalmen

PARTIES TO DISPUTE: (

(Union Pacific Railroad Company (former Chicago &
(North Western Transportation Company)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad Company (C&NW):

Claim on behalf of W. T. Merriweather for payment of 106 hours at the straight time rate and 35.5 hours at the time and one half rate. Account Carrier violated the current Signalmen's Agreement, particularly Rules 11 and 51 when on October 4, 1999 Carrier removed Claimant from service without benefit of a fair and impartial investigation and without reaching an agreement between Labor Relations and the General Chairman. Carrier compounded the initial violation by failing to respond to the initial tiling of the claim in a timely fashion. Carrier's File No. 1225283. General Chairman's File No. N52-046. BRS File Case No. 11564-C&NW.”

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.

It is undisputed that the Claimant, at the time of this dispute a Signalman on Carrier's former C&NW property in the Chicago, Illinois, area, was removed from service on October 4, 1999, after his position was abolished and he attempted to displace onto a position driving a Company vehicle and requiring a valid commercial driver's license. When the Carrier determined that he did not possess a CDL, it rejected his attempt to displace. Several days elapsed before management tried to call him to advise of other available displacement options, but by then he had undertaken travel to two states in an effort to straighten out his driving privileges.

On November 25, 1999, the Organization submitted this claim on his behalf asserting that the Carrier's action was in violation of Rules 11 and 51 barring removal from service without an Investigation except in emergencies.

The Carrier's correspondence of January 20 and July 18, 2000, rejecting the claim states that the Claimant was not removed from service for disciplinary reasons as contemplated by Rule 51, but rather was advised that he was not qualified to work the position onto which he was attempting to bump because he no longer possessed a valid CDL or even a valid driver's license, both required by the position sought. Additionally, the Carrier stated that Rule 11 addresses physical examinations and has no application to driver's licenses. It conceded, however, willingness to reimburse the Claimant for 40 hours of straight time pay lost as a result of the time lapse between October 4 and 8. The Organization rejected that proposition and took timely appeal to the Board for final and binding resolution.

It is apparent from the record that the Claimant was disqualified from displacing onto a position for which he was not qualified and that Rules 11 and 51 have no application. As the Board has consistently held in analogous situations, the Carrier is entitled to establish both minimal entrance qualifications and to determine an employee's fitness and ability to hold a given position. In this instance it is undisputed that the CDL requirement was plainly set forth in the Carrier's published policy and that the Claimant was aware that he could not qualify for the position he was attempting to displace.

While the Board concludes that the Carrier's handling of the Claimant's attempted exercise of seniority was consistent with the terms of the Agreement, it presented insufficient evidence to support the delay between October 4 and, October 8 in notifying him of further available bumping options. Accordingly, the claim will be partially sustained. The Carrier shall reimburse the Claimant 40 hours at the straight time rate.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 25th day of April 2006.