

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37846
Docket No. MW-36799
06-3-01-3-340

The Third Division consisted of the regular members and in addition Referee Robert M. O'Brien when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Union Pacific Railroad Company [former Southern
(Pacific Transportation Company (Western Lines))

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed and refused to assign Track Foreman M. E. Mojarro to the track foreman position on Gang 8162 by Bulletin No. WRT 1046 dated March 25, 2000 and instead assigned junior employe E. Avelar (System File J-0020-55/1231543 SPW).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant M. E. Mojarro shall now be assigned to the foreman position in question and he shall be compensated for all lost wages beginning on March 25, 2000 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.

In late 1996, the Union Pacific Railroad Company (Union Pacific or the Carrier) and the Southern Pacific Transportation Company - Western Lines (Southern Pacific) merged. The Surface transportation Board imposed the New York Dock Conditions on this merger.

At the time of the merger, there was a Collective Bargaining Agreement in effect between the Southern Pacific and the Brotherhood of Maintenance of Way Employes (BMWE or the Organization) governing maintenance of way employees on the Southern Pacific.

The BMWE Pacific Federation represented numerous classifications of employees who worked on several Southern Pacific Divisions, including the Los Angeles Division. On September 30, 1997, the BMWE Pacific Federation, the BMWE Union Pacific Federation, and the Carrier entered into an Implementing Agreement pursuant to Article I, Section 4 of the New York Dock Conditions. That Agreement was effective November 1, 1997.

Pursuant to the 1997 Implementing Agreement, the Union Pacific lines west of Daggett, California, became part of the Southern Pacific Los Angeles Seniority Division. Some of the Maintenance of Way employees assigned to the so-called Los Angeles Basin were working under a Collective Bargaining Agreement between the Union Pacific and the BMWE. After November 1, 1997, these employees were governed by the Collective Bargaining Agreement between the BMWE and the Southern Pacific as well as the understandings, interpretations and Agreements connected thereto.

On March 17, 2000, the Carrier posted a bulletin for the position of Foreman of Regional Gang 8162, headquartered at Anaheim, California, in the Los Angeles Basin. The bulletin stated that applicants must possess a Commercial Drivers License (CDL). The United States Department of Transportation (DOT) requires drivers who operate vehicles that have a gross vehicle weight (GVW) of 26,000

pounds to possess a CDL. Regional Gang 8162 had several vehicles with a GVW of 26,000 pounds.

The Assistant Foreman on Gang 8162, Mojarro, applied for the Foreman's position. He does not possess a CDL. The Carrier awarded the position to an employee who was junior in seniority to Mojarro who did possess a CDL.

On April 11, 2000, the First Vice General Chairman of the BMWU Union Pacific Federation filed a claim on behalf of Mojarro contending that he should have been awarded the Foreman's position on Gang 8162 because considerably more seniority than the employee who was given the position. The Manager of Engineering Resources denied the claim asserting that the Claimant was not qualified for the Foreman's position on Gang 8162 because he was not DOT/CDL qualified.

The claim was appealed on the property but could not be resolved. It was therefore appealed to the Board.

It is well settled that unless restricted by a specific Rule or Agreement, it is management's prerogative to establish the qualification of advertised positions. However, this managerial prerogative is not unconditional. Rather, when challenged, management must demonstrate that the qualifications for a posted position are reasonably related to the duties of the position.

In the instant claim, the Carrier contends that the Foreman of Gang 8162 was required to have a CDL because several vehicles driven by the gang weighed more than 26,000 GVW pounds and the DOT requires operators of these vehicles to be CDL certified. Therefore, if the drivers assigned to these vehicles are absent from the gang for whatever reason, the Foreman could be called upon to operate these vehicles.

The Organization argues that requiring the Foreman of Gang 8162 to be CDL qualified was arbitrary because his core responsibility is to supervise and instruct employees in the performance of their work and to ensure that the work is accomplished safely and efficiently. According to the Organization, there were four Truck Drivers, Welders and Welder Helpers in the gang who were CDL qualified.

Moreover, if the Carrier needs additional CDL qualified employees in the gang, the Organization contends that it can advertise for these additional drivers.

Initially, it must be observed that the Board was not cited any Rule in the BMW-Southern Pacific Agreement governing maintenance of way employees that restricted the Carrier's right to establish qualifications for maintenance of way positions. Therefore, the Carrier had the right to require the Foremen of Gang 8162 to be CDL qualified if there is a rational basis for this prerequisite.

The Carrier argues that it required the Foreman of Gang 8162 to have a CDL because he may be required to operate a vehicle in the gang that requires the driver to be CDL/DOT certified. There is a rational basis for this condition, in our view. In the absence of qualified drivers from the gang, the Foreman may be required to operate vehicles assigned to the gang in excess of 26,000 pounds GVW to keep the gang functioning and productive. The Carrier's concerns are not baseless. Rather, they are grounded in common sense. Accordingly, the Carrier was not arbitrary when it required the Foreman of Gang 8162 to possess a CDL. The claim is denied because the Claimant did not have a CDL.

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 August 2006.