

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37951
Docket No. MW-36741
06-3-01-3-262**

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin 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 assigned the foreman position advertised on Bulletin No. RE 1011 on January 21, 2000 to junior Track Sub-department employe Mr. Ramirez on February 4, 2000, instead of assigning Mr. J. T. Arellano who was senior and made application for the position (Carrier's File 1229796 SPW).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. T. Arellano shall now be assigned to the foreman position in question and compensated for wage loss and reimbursed for all mileage expense incurred beginning five (5) days subsequent to the date of the assignment notice and continuing until the violation ceases to exist.”

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 instant claim arose when the Claimant was not awarded a Foreman position for which he was the senior applicant because he did not already possess a Commercial Driver's License (CDL) or corresponding certification by the Department of Transportation (DOT). Although he was working as an Assistant Foreman at the time he submitted his application, the Claimant actually held a Foreman seniority date of April 15, 1968.

The Organization relies primarily upon Rule 10 for its position. Among other provisions, that Rule calls for awarding positions on the basis of greatest seniority.

The Carrier, to the contrary, contends, and the Organization does not dispute, that applicable state and federal law requires employees who drive vehicles of greater than 26,000 lbs. GVW to be DOT certified and possess a CDL. By policy promulgated on June 25, 1999, the Carrier began requiring the DOT/CDL requirements on all bulletins for positions that might be required to operate such a vehicle unless "... there is specific collective bargaining language to the contrary, ..."

We reviewed the text of each of the Rules cited by the Organization in support of its position. None of them are found to contain any terms that explicitly preclude the Carrier from insisting upon present possession of the DOT certification and/or a CDL as threshold qualifications for positions involving the operation of applicable vehicles.

It is well settled that carriers have the inherent managerial authority to establish the duties, responsibilities and qualifications for positions where an Agreement does not explicitly prohibit it from doing so. See, for example, Third

Division Award 37532. This principle has often been applied to situations, like the instant claim, where there is a dispute over a DOT/CDL requirement. See Third Division Awards 34017, 35010, 35336, 36086, and 36992. These Awards and others like them recognize management's prerogative to establish CDL possession as a threshold requirement for a position as long as there is a rational basis for doing so and it is reasonably related to the duties of the position.

On this record, it is undisputed that the Foreman position in question could be required to operate a vehicle needing DOT certification and/or a CDL. We find it to be reasonable, therefore, for the Carrier to have required such qualifications as a prerequisite to awarding such a position. Because the Claimant did not possess the necessary qualifications, rejecting his application for the position did not violate 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 19th day of September 2006.