

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 38950
Docket No. SG-39066
08-3-NRAB-00003-050580
(05-3-580)

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

PARTIES TO DISPUTE: ((Brotherhood of Railroad Signalmen
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad:

Claim on behalf of M. E. Cunard, for 8 hours' pay each day for July 9, 12 and 13, 2004, account Carrier violated the current Signalmen's Agreement, particularly Appendix X and Rules 58 and 80, when it refused to allow the Claimant to make a displacement of a junior man at the circuit board repair shop on Friday, July 9, 2004. Carrier sent the Claimant home without pay and he was not allowed to make the displacement until July 14, 2004. Carrier's File No. 1409047. General Chairman's File No. N 1 491. BRS File Case No. 13264-UP.”

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.

This dispute arose when the Claimant was displaced from his Electronic Technician position at the Central Dispatch Center in Omaha, Nebraska, on July 7 and then on July 9, 2004 sought to exercise his seniority to displace junior Electronic Technician S. W. Slupianek at the Circuit Board Repair Shop in Council Bluffs, Iowa, which was denied because the Claimant did not possess a valid FCC radio license or the equivalent at the time he sought to displace Slupianek. This claim followed.

According to the Carrier in a September 7, 2004 memo from Manager of Signal Shop V. L. Engeberg, the Claimant was not allowed to displace Slupianek because:

“ . . . We have never allowed anyone without an FCC license or equivalent to bid into or bump into the Signal Shop at Council Bluffs. These are technical jobs working at circuit level repairs that require an extensive knowledge of Electronic Theory. At the time that Mr. Cunard wished to bump Mr. Slupianek, he did not have any education regarding Electronic Theory and had not passed the FCC exam for the General Radio License. . . .”

The Carrier possesses the managerial right to set reasonable job qualifications. The record does not show that the Carrier's requirement for possession of an FCC license or equivalent for the position the Claimant desired to displace onto was arbitrary or capricious. On that basis, the claim must be denied.

The fact that the Claimant obtained the required license on July 13, 2004 shortly after being denied the ability to displace Slupianek (and then was allowed to obtain the position at Council Bluffs) does not change the result. The license requirement was a pre-condition for the Claimant's ability to displace Slupianek.

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The record therefore shows that at the time the Claimant sought to displace Slupianek, the Claimant was not qualified to do so.

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 29th day of February 2008.