

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 39719
Docket No. MW-38119
09-3-NRAB-00003-040010
(04-3-10)

The Third Division consisted of the regular members and in addition Referee Brian Clauss when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(BNSF Railway Company (former Burlington
(Northern Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it abolished/disqualified Mr. R. J. Storkson from the position of head welder at Glasgow, Montana on October 29, 2001 and then assigned said position to junior employee D. Page beginning on October 30, 2001 and continuing (System File B-M-965-F/11-02-0129 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, the Claimant R. J. Storkson shall now ‘. . . receive 8 hours for each claimed date and be made whole for any and all losses including any and all overtime worked by the junior employee until violation ceases and the Claimant is allowed to displace on the head welders position that works within the State of Montana.’”**

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 Claimant was a Head Welder and drives a FHWA regulated truck on his welding crew. A requirement of the Head Welder position is maintaining both a valid CDL and a DOT certification. His DOT certification expired on October 6, 2001. Prior to that expiration, the Claimant was found medically unqualified to drive regulated vehicles. The Claimant obtained a Montana only exemption for his CDL, but did not obtain a DOT certification.

The Organization claims that the Carrier's DOT certification requirement is unreasonable given that the Claimant has driven the truck for years and has never left the State of Montana. Given that he has been given a medical waiver by Montana, he should be allowed to continue to drive the truck as he has for years. The job did not require a DOT certification when the Claimant started in the position in 1982. The Carrier counters that the requirement of a DOT certification is a reasonable policy recognized in numerous Awards. Those Awards also recognize that requiring DOT certification, imposed after the claimants have started in a position, is reasonable.

The Board carefully reviewed the evidence. The Organization does not deny that the Claimant no longer possesses a valid DOT certification. DOT certification is dispositive here.

It is reasonable for the Carrier to require that Head Welders, who drive Carrier vehicles, possess a valid DOT certification. See generally, Special Board of Adjustment No. 1135, Award 1. The Claimant does not possess a valid DOT certification. Further, even if the position did not require a DOT certification when the Claimant first started, there is nothing in the Agreement that prohibits the

Form 1
Page 3

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Carrier from altering the job qualifications and requiring a DOT certification. See Third Division Award 26295.

Head Welders drive regulated Carrier trucks. It is reasonable for the Carrier to require CDLs and DOT certifications for Head Welders. Because the Claimant does not possess the required valid DOT certification the claim is denied.

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 26th day of June 2009.