

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40961
Docket No. MW-40849
11-3-NRAB-00003-090140**

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

(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference

PARTIES TO DISPUTE: (

(Union Pacific Railroad Company (former Missouri
(Pacific Railroad Company)

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 Mr. M. Lopez to the foreman position on Gang 9272 per Bulletin No. 4839 effective September 28, 2007 and instead assigned junior employe R. Dirden (System File M7-MOP064/1490212 MPR).
- (2) As a consequence of the violation referred to in Part (1) above, the Carrier shall now correct the aforesaid Bulletin No. 4839 to show Claimant M. Lopez as the assignee and the Claimant shall be allowed the difference in pay between the assistant foreman rate and the foreman rate for all straight time and overtime worked by the junior employe beginning September 28, 2007 and continuing until he is allowed to assume said foreman position.”

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 the bid cycle September 14 through September 28, 2007, on Bulletin No. 4839 for a Foreman position on Texas Tie Gang 9272, the bids closed on Monday September 24 at 7:00 A.M. Claimant M. Lopez bid for this promotion. The Claimant established seniority as an Assistant Foreman as of July 21, 2006. The Carrier awarded the bid to an employee junior to the Claimant. The Organization filed this claim.

The Carrier originally bulletined this position some eight weeks prior to September 14 and withdrew it to allow potential bidders to obtain the CDL endorsements, Passenger and Hazardous Materials, the Carrier required for the position. Once an employee obtains the CDL and its endorsements, he notifies the Carrier of updated license information. The Carrier determines whether an employee meets the driver's license prerequisites for the position based on the information it maintains in its files.

The following sequence of events are pertinent to the determination of this dispute. As noted above, the Carrier bulletined the position from September 14 to its close on Monday, September 24 at 7:00 A.M. The Claimant obtained his Passenger endorsement on September 20. He forwarded a copy of the endorsement to the Carrier by facsimile on Friday morning, September 21. This updated information was not placed in the Claimant's file until September 27. After the close of the bulletined period, the Carrier's Bulletin Clerks awarded the position based on the information on file as of September 24. The assignment was made on September 28, 2007.

The Carrier provides instructions to employees how to update their license information, as follows:

- “3. MAIL (no faxes allowed because it is hard to read) driver licenses and medical cards to. . .Omaha
4. Each license and medical card received is processed within 5 to 7 business days upon receipt.”

When he did not obtain the promotion, the Claimant wrote a letter to the Carrier’s DOT office asking that the Carrier correct its mistake and records to reflect that he had submitted all endorsements prior to the close of the bulletin period. The Claimant received a phone call from the Carrier’s DOT office which processes license information. The person contacting him apologized, but informed him they were understaffed and could not process the information in time.

The Organization questions the need for the Passenger endorsement. The Board notes it is well established that the Carrier establishes the qualifications for a position. See Third Division Awards 12358 and 23886. The Carrier has the right to set CDL requirements for a position. See Third Division Award 32353. The Carrier insists on the Passenger endorsement, because there are occasions (due to the absence of a Driver, for example) when the Foreman is called upon to transport member(s) of the gang as passengers. The Foreman must have the necessary licensure to do so. The Board concludes that it is not arbitrary for the Carrier to insist on these licensure requirements as prerequisites for the position.

The Organization argues that the Claimant met the requirements of the position and updated his materials on file before the bulletin period closed, the Bulletin Clerks made the decision and the Carrier announced the assignment. The matter turns on whether the Carrier may insist to the point of denying the Claimant’s promotion on a seven-day period to process updates.

The statement of V. Fults that is part of the record made on the property describes the Carrier’s assignment process:

“All assignments requiring DOT and CDL endorsements may only be assigned when the proper documentation is made in Psoft by the DOT office. We begin making assignments on Monday and finish

usually by Wednesday. We do not rework our bulletins on Friday to see if anyone has updates to their endorsements. To correct a bulletin that the endorsements have been updated after the bulletins have been worked requires that all bulletins in that set must be reworked and may even affect other sets when preferences are involved. An employee must at all times keep his endorsements current. It is the responsibility of the employee to make sure his updates have been updated after sending them into the DOT office.”

The Carrier may set reasonable time periods for the processing of information it receives for placement in employee files. See Public Law Board No. 402, Award 67. The Carrier must inform employees of those expectations. The Carrier has done so, in this case through the instructions on how to mail and not fax updates and to allow the Carrier five to seven days to process the information after receipt of the information provided. This Carrier requirement in 2007 that it not be sent by fax due to the illegibility of many faxes is a reasonable requirement. There is no evidence in this record to suggest that it is unreasonable to allow seven days to process information received by mail, in addition to the time it takes for the mail to get to Omaha.

To summarize, the Carrier may set a closing date for the receipt of bids and all relevant supporting information. The Carrier may set a reasonable time period to process new information. It may rely on the information in its records on the closing date for the bulletin to make its assignments. It did so in this case.

The Organization argues that under Rule 19, promotions will be based on ability, merit, and seniority. The Carrier made its decision on the basis of the information it had processed by the close of the bulletin period. Its decision comports with Rule 19.

The Organization argues that the Claimant, as the most senior, should have been placed on the position and afforded 30 days to meet the qualifications for the position. Certainly, the Claimant did so in this case, the Organization maintains. The Rule provides for the occasion if an employee fails to satisfy the requirements of the position within the first 30 days on the position. The Carrier made its decision on the basis of information in its possession at the close of the bulletin. The

Claimant knew the requirements of the position some eight weeks prior to the issuance of the September bulletin. There is no explanation for his last minute attempt to update his licensure. To upset the Carrier's decision would surely impose an administrative burden without contractual support for such decision. The Organization failed to meet its burden of proof and demonstrate that the Carrier violated the Agreement when it made the assignment to the vacant position based on the information in its records.

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 14th day of April 2011.