

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Form 1

Award No. 30110
Docket No. MW-29375
94-3-90-3-288

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Consolidated Rail Corp.

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier advertised a repairman position at the Easton Repair Shop on Bulletin No. ER-10-88 dated December 27, 1988, which included the requirement: '*** Must have valid operator's Class I, II and III license, perform work in connection with operation of tractor trailer and boom truck....' (System Docket MW-381).
2. As a consequence of the aforesaid violation, the Carrier shall:
 - '(1) Remove the following from Bulletin No. ER-10-88:

Qualifications & Duties: "Must have valid operators Class 1, 2 and 3 license, perform work in connection with operation of tractor trailer and boom truck,.."
 - (2) Remove the "must have valid operators license..." from all the qualification and duty requirements from all the repairmen positions advertised at M/W Repair Shop, Easton, PA.
 - (3) Advertise three (3) vehicle operator positions at the M/W Repair Shop, Easton, PA."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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 waived right of appearance at hearing thereon.

On December 27, 1988, the Carrier posted a bulletin for a position as MW Repairman at Easton, Pennsylvania. Included in the "Qualifications and Duties" was the following:

"Must have valid operator's Class I, II, and III license, perform work in connection with operation of tractor trailer and boom truck, . . ."

Previous bulletins for the same position had instead stated simply, "Must have valid operator's license."

The Claim seeks the following remedies:

- (1) Remove the following from Bulletin No. ER-10-88:

Qualifications & Duties: "Must have valid Operators Class 1, 2 and 3 license, perform work in connection with operation of tractor trailer and boom truck . . ."
- (2) Remove the "must have valid operator's license" from all the qualification and duty requirements from all the repairmen positions advertised at M/W Repair Shop, Easton, PA.
- (3) Advertise three (3) vehicle operator positions at the M/W Repair Shop, Easton, VA.

The thrust of the action sought by the Organization is not only to require removal of the Class I, II, and III license requirement, but also to remove all truck operation from existing MW Repairman positions and presumably turn such work over to vehicle operator positions.

As to the second requirement, there is obviously no basis on which the Board can consider the removal of pre-existing position requirements (vehicle operation). It is equally obvious that the Board is without authority to require establishment of new vehicle

operator positions, absent any showing of specific contractual mandate to do so.

What is left is whether there is any Rule violation in the Carrier's unilateral revision of the qualifications and duties of a position. The Organization demonstrates, through reference to other Awards, that changing such requirements may be prohibited if it can be shown that the Carrier is acting in an arbitrary or capricious manner, where no logical connection with the position can be shown. Further, such action may be in violation of seniority rights if such changes are made solely in an attempt to treat a specific employee in a disparate manner.

Review of the facts as presented does not persuade the Board that the Carrier acted here in such a manner or beyond its discretionary authority to determine the qualifications for a position. It is true that the Carrier apparently did not impose the additional license requirement on existing MW Repairmen. This, however, does not mean that the Carrier is without authority to do so in a prospective manner.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin / lw
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 4th day of April 1994.