

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31186
Docket No. MW-30906
95-3-92-3-770

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(CSX Transportation, Inc. (former
(Chesapeake and Ohio Railway Company)

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

- (1) The Carrier violated the Agreement when it disqualified Mr. P. Johnson from his assigned welder position on the basis of being color blind. [System File C-TC-7499/12(91-924) COS].
- (2) As a consequence of the violation referred to in Part (1) above, Mr. P. Johnson shall be reinstated to his welder position and he shall be compensated for all wage loss suffered beginning April 23, 1991 and continuing until such time as he is reinstated to said welder 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 waived right of appearance at hearing thereon.

Claimant was notified by letter dated February 12, 1991 that he was pulled from service for high blood pressure. On April 23, 1991 Claimant was released to return to service but advised by the Roadmaster that he could return as a Laborer, but not as a Welder. This was further indicated as due to the fact that Claimant was

unable to pass the Department of Transportation (DOT) physical examination on account of being color blind.

The Organization makes numerous arguments, including that the Claimant had spent 21 flawless years driving for the Carrier, let alone numerous additional years of personal driving. It argues that anyone can determine traffic light color order with green at the bottom and certainly color blindness should not disqualify anyone from driving a company truck. In the claim at bar the Organization wants compensation from the date he was disqualified from his Welder position until May 4, 1992 when he obtained his DOT physical clearance to drive.

The Board finds no violation of Rule 2(b) of the Agreement protecting the Service Rights of the Claimant to hold positions based on seniority. The Carrier's decision to disqualify is clearly indicated in the record as failure to pass a required DOT physical. The Organization did not refute the Carrier's assertion that the Claimant could not pass the DOT physical during the period of time encompassed by this claim, nor did it take issue with the requirement that the Welder be qualified to drive the Welder's truck, which required DOT certification. The fact that the Claimant eventually passed and obtained a license, including a hazardous materials endorsement is of no relevance. The question at bar is whether the Carrier violated the Agreement from April 23, 1991 until the Claimant was reinstated to the Welder position effective May 4, 1992. As unrefuted, it stands as fact in this record that during the entire period of time encompassed by this claim the Claimant could not pass the DOT physical and was restricted from driving a truck. Accordingly, there is no proof in this record to find a violation by the Carrier in its action of disqualification as Welder due to lack of DOT qualifications (Second Division Award 12347).

AWARD

Claim denied.

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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 September 1995.