

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32152
Docket No. MW-31392
97-3-93-3-382**

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 Employees
(Burlington Northern Railroad (former Fort Worth and
(Denver Railway Company)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier advertised a temporary welder helper position within Bulletin FTW-08A, requiring the applicants to have a Commercial Driver's License, i.e., vehicles weighing over 26,000 lbs. (System File F-92-12/9MWD 92-08-25B FWD).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant A. J. Gonzales shall be awarded said position and he shall be allowed the "*** difference in overtime worked by Mr. Switzer commencing with date of assignment and continuing until the violation ceases."**

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 Carrier posted a vacancy for the position of Welder Helper, specifying that the incumbent must have a proper vehicle driving license, be qualified by the Department of Transportation, and hold a Commercial Driver's License. The Claimant bid on the position, but he was not so qualified. Thus, the position was awarded to the senior bidder with DOT/CDL qualifications.

At the outset, the Organization makes reference to the position of Truck Driver, suggesting that this change somehow made the assignment in the Welding Department that of a Truck Driver. On this basis, the Organization argues that the Carrier cannot freely create such new position without consultation. The Board does not accept this reasoning. What the Carrier has done is add a qualification to an existing position, and there is no Rule support to prevent this, with an exception. The exception, as held in many previous Awards, is that the Carrier may not unilaterally add a qualification to a position which is unrelated to performance of the position or may be found arbitrary or discriminatory to the effect of denying the position to an otherwise qualified employee.

The Carrier's Submission goes into great detail as to current DOT regulations concerning vehicle operation and also points out that a Welder Helper, working with a Welder (who usually does drive a vehicle), is called upon under certain circumstances to drive the truck. Unfortunately, the appeal replies from the General Manager and the Assistant Director, Labor Relations contain no such information. These replies, in effect, merely state, "The position of Welder Helper requires DOT certification and a commercial driver's license", without any indication whatsoever as to why this is the case. The Organization properly objects to this "new material" provided in the Submission.

Nevertheless, the General Manager's response did state as follows:

"These federal requirements are nothing new to the employees and the BMW. Information on these requirements had been provided for two (2) years prior to the enforcement date. [The Claimant] had been informed of this impending job qualification. . . . He knowingly dis-

regarded this information and bid on this position for which he cannot meet the job qualifications.”

The record does not disclose any contradiction to these facts by the Organization.

This is not a matter of an employee being displaced from a permanently held position, nor is there any evidence that there are any special circumstances under which the Claimant could not meet the DOT/CDL requirements if he wished to do so. As a result, the Board finds no Rule violation in the Carrier's action.

Two Awards cited by the Organization are readily distinguishable from the matter here under review. Public Law Board No. 4768, Award 70 concerned an employee who was already in the position of Welder Helper and presented unusual medical circumstance. Third Division Award 31715 concerns an employee returning to a long-held position which he had recently left (and the Carrier failed to establish on the record any “rational basis” for the DOT/CDL requirement).

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 13th day of August 1997.