

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32588
Docket No. MW-31279
98-3-93-3-203**

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

(Brotherhood of Maintenance of Way Employees

PARTIES TO DISPUTE: (

(The Kansas City Southern Railway Company (former
(Louisiana & Arkansas Railway Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated on June 18, 1991 when the Carrier posted Bulletin No. 44 and improperly required ‘. . . all Foremen, Assistant Foremen, Apprentice Foremen, Relief Foremen, all Machine Operators, (Crane Operators, Automatic Tamper Operators, Hi-rail Crane Operators, Ditcher Operator, Ballast Plow Operators, Undercutter, Pettibone Crane, Locomotive Crane, Jordan Ditcher, Burro Crane, Road Railer Crane, Tamper Operators, etc.), Machine Operator Helpers, Welding Foremen, Welder Helpers, B&B Foremen, B&B Mechanic, B&B Helpers and Shop Mechanics to have a CDL, Commercial Driver’s License by APRIL 1, 1992. They will also have to have “Air Brake Endorsement” on this license.’ (Carrier’s File 013.31-441).
- (2) As a consequence of the violation referred to in Part (1) above, the bulletin and its requirements shall be rescinded and the Carrier shall pay for any and all expense including any mileage incurred by those employees that have taken the test previously or are going to take the test and that the Carrier help them in preparation before taking any test.”

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 Organization contends that when Carrier posted Bulletin No. 44, instituting a blanket requirement that all occupants of certain positions in the Maintenance of Way and Bridge and Building Departments possess a valid Commercial Driver's License (with an air brake endorsement) its Agreement was violated, because the CDL requirement was established arbitrarily, and may not be reasonably related to the duties of certain specific positions. The Organization acknowledges that Carrier has an established right to determine qualifications and requirements of various positions. However, it says that these determinations cannot be arbitrary, and they must demonstrably be job related. A blanket requirement for a CDL for certain positions, i.e., those that would not normally operate Carrier equipment on streets and highways, is not reasonable, the Organization says.

The Board concurs with the Organization. A blanket requirement for a CDL, one that includes positions that would not be expected to operate equipment on streets and highways, is considered arbitrary and not job related. Accordingly, we will sustain the claim in part, and direct that Carrier not enforce Bulletin No. 44 with respect to those positions that would not operate Carrier equipment on streets and highways.

Part (2) of the Statement of Claim asks for reimbursement of certain expenses for employees that may have been required to secure a CDL. Carrier has indicated that when it made CDL's a requirement, it provided training and assistance to employees to secure the license. There is no showing in this record that this training was inadequate.

or that any employee was put to additional unusual or extraordinary expense as a result of acquiring a CDL. Accordingly, this aspect of the claim will be denied.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 22nd day of May 1998.