

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32876
Docket No. MW-32181
98-3-94-3-607**

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

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

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier posted Bulletin No. CEM-B-4 advertising a Class ‘A’ Equipment Operator position (bridge tie handler) requiring the applicants to have a CDL license and thereafter awarded the position to junior employee T. Calhoun [System Files C-TC-5560/12(93-767) and C-TC-5593/12(93-1033) COS].**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant C. Del Papa shall be placed on the tie handler position, compensated for the difference between B&B mechanic rate and Class A Operator and he shall be listed on the Class A Operator seniority roster beginning May 10, 1993 and continuing.”**

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.

This dispute involves Carrier's posting of Bulletin No. CEM-B-4 on March 30, 1993 advertising for a Class A Equipment Operator position on B&B System Force 5X85, and including the requirement of a CDL license, as well as its award of the position on April 20, 1993 to an employee junior to Claimant in seniority. At the time of the posting Claimant obtained his CDL permit, but did not get his CDL license until May 4, 1993, after the position was awarded to T. W. Calhoun, who had a CDL license. The Equipment Operator position in issue involved the operation of a Tie Handler, which is a flange wheel machine that is operated solely on the track, and does not travel on a highway or other road. It is undisputed that the operation of a Tie Handler does not require a CDL.

The Organization initially contends that Carrier's imposition of a CDL requirement for the position of Tie Handler Operator was not reasonably related to the duties of the posted position, was arbitrary and used to defeat Claimant's seniority rights. It also notes the fact that Calhoun never drove a boom truck or other vehicle requiring a CDL since he assumed the position, and that Carrier was aware that Claimant was obtaining his CDL at the time of his bid and received it shortly after the position began. The Organization avers that the gang in question is made up of a Foreman and four or five B&B Mechanics, and relies upon a Memorandum of Agreement dated January 17, 1985 in arguing that the B&B Mechanic is the person in a gang that is supposed to assume the truck driving functions, not the Equipment Operator, thereby negating any need for a CDL in this position. The Organization relies upon the following precedent in support of its position that the job should have been awarded to Claimant as the senior Class A Operator who bid on it: Third Division Awards 2143, 13196, 15626, 19432, 26295, 29218, 29851, 29863; Second Division Awards, 2907, 12395; Fourth Division Award 4895; Special Board of Adjustment No. 956, Award 16.

Carrier argues that it has the right to determine the qualifications and requirements of bulletined assignments, as well as the fitness and ability of an employee for such position. It notes that this Equipment Operator position is occasionally asked to drive the boom truck, as noted by Claimant's statement that he had done so in the

past, and Federal Law requires a CDL for the operation of that vehicle. Carrier relies upon Third Division Awards 20878, 22029, 22462, 22892, 32618, as well as Special Board of Adjustment No. 570, Award 283 in support of its contention that Claimant was properly denied the position because he was unqualified due to his own procrastination.

There is no dispute between the parties concerning Carrier's established right to determine qualification requirements of a position, so long as they are reasonably related to the duties of the position in issue and are not arbitrary. A review of the record reveals that the Organization made several assertions on the property which were not specifically addressed by Carrier, including the fact that the operation of a Tie Handler does not require a CDL, the employee in that position has not driven the boom truck since he assumed the job, there are four or five Mechanics assigned to the gang in issue, and the 1985 Memorandum of Agreement addresses the fact that it is the Mechanic that is supposed to drive the truck when there is no other truck driver on the gang, not the Equipment Operator.

Carrier asserted that Federal Law requires a CDL for operation of a boom truck, a fact that is not contested by the Organization. It also alleged that the Equipment Operator position may have to drive a boom truck in support of the imposition of the CDL requirement, relying upon Claimant's own statement that he had driven the truck on occasion in the past. While Carrier questioned the relevance of the 1985 Memorandum of Agreement, it did not contest its terms or explain why it did not support the Organization's claim that any truck driving work on this gang should be performed by a Mechanic, not the bid position.

The record convinces us that the possibility of assigning boom truck driving on occasion in the future to the Tie Handler Operator position bulletined herein is an insufficient basis upon which to disqualify Claimant under the circumstances in this case. Carrier was aware that Claimant was going to obtain his CDL in the near future, and had his permit at the time of the bid, as well as the fact that there were other Mechanics on the gang who could have been assigned the truck driving work, at least in the interim. While there is no doubt that Carrier may wish to have employees cross-qualified to give it the maximum amount of flexibility in assignments, it has not sustained its burden of showing that possession of a CDL license at the time of the award of the position was reasonably related to the normal job duties of a Tie Handler Operator and was a sufficient basis upon which to overlook Claimant's seniority rights to the Class A Operator job in issue. This finding is based upon the record on the

property which shows that Carrier's position was supported mostly by bare assertions, while the facts relied upon by the Organization were never contested. See Third Division Award 19432. This Award should not be read as limiting Carrier's right to add a relevant licensing requirement to a bulletined position. See Third Division Awards 26295, 32618.

AWARD

Claim sustained.

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 21st day of October 1998.