

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 34010
Docket No. MW-32847
00-3-96-3-184**

The Third Division consisted of the regular members and in addition Referee Robert Perkovich when award was rendered.

PARTIES TO DISPUTE: (**(Brotherhood of Maintenance of Way Employes
(Burlington Northern Railroad Company**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier improperly bulletined and assigned a foreman’s position, No. 11038, on Bulletin No. F-15 with the requirement that the incumbent possess DOT qualifications (System File T-D-666-B/MWB 93-11-10C).**
- (2) As a consequence of the aforesaid violation,’ . . . we are filing a claim on behalf of all Track Sub-department employees listed on Seniority District 14, Roster 1, Rank C, as of the issuance of the current Roster dated June 1, 1993, requesting that Position No. 11038 be cancelled and rebulletined without the license requirement. Also, that the Claimants receive an equal and proportionate share of eight (8) hours straight time and all overtime worked on this Position beginning on July 12, 1993, the report date, 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.

Over time the Carrier began making DOT qualifications a requirement for certain positions in response to changes in federal law. One such case involved the Foreman position in a district maintenance gang headquartered at Staple, Minnesota. More particularly, prior to June 1993 there was no such requirement for the position on that gang. However when at that time the Carrier abolished all of the gang positions at Staples, and rebulletined the same gang positions with a headquarters at Detroit Lakes, Minnesota, the Carrier imposed the DOT qualifications as a requirement for the Foreman position. Both before and after the newly imposed requirement the gang in question consisted of the Foreman, a Bus Driver (which at all material times required DOT qualifications), and three Sectionmen.

The Organization argues herein that under Rule 55 the positions on the Detroit Lakes gang should have been awarded on the basis of relative seniority and when the Carrier imposed the DOT qualification as a requirement its action had the affect of removing from eligibility employees with greater seniority than the employee chosen to fill the position. Thus, Rule 55 was violated. The Carrier on the other hand argues that Rule 55 is not a reservation of work provision and that its action was merely the exercise of its managerial right, in a reasonable manner, to determine the qualifications necessary for positions.

It is well-settled, on this property at least, that the Carrier retains the right to establish the qualifications for positions and that it may exercise that right so long as there is a reasonable relation between the qualifications it imposes and the work of the position in question. (See, e.g., Third Division Award 32152.) Here, the record establishes that on this property gang Foremen are called upon to do craft work, including driving vehicles for which DOT qualifications are necessary. Moreover, under such circumstances the Board has held that a reasonable relation exists between the qualifications imposed and the work of the position. (See, e.g., Third Division Awards 29641, 32185.) The Organization cites cases to the contrary, but they are all distinguishable. (See, e.g., Third Division Award 32588 where the Carrier imposed a "blanket requirement", Third Division Award 32716 where the Carrier's defense was not raised on the property and Third Division Award 32876 where the Carrier failed

**Form 1
Page 3**

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to establish that the qualification imposed was necessary at the time the position was awarded.)

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 19th day of April, 2000.