

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 34012
Docket No. MW-34426
00-3-98-3-39**

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 Santa Fe Railway Company
((former Burlington Northern Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed to assign Mr. D.C. Kinnischtzke to the Track Sub-department truck driver position advertised on Bulletin F-15, dated June 8, 1994, and instead assigned the position to a junior employe (System File T-D-806-H/MWB 94-10-05AO BNR)**
- (2) As a consequence of the violation referred to in Part (1) above, Mr. D. C, Kinnischtzke shall:**

‘ . . . be assigned in accordance with his seniority and bid application. We further request that Claimant be granted a District 14, Track Sub-department seniority date of June 22, 1994 and that he be made whole for any and all losses, including future right of displacement or bidding rights, difference in rates of pay between that of Truck Driver and those rates of pay paid to him, and reimbursement for loss of any and all overtime opportunity beginning on June 22, 1994 and continuing until Claimant is assigned thereto.

We further request that Claimant receive remuneration for all mileage incurred traveling between his residence and his work locations during the claimed period. We request that Claimant receive remuneration for any and all away from

home expenses incurred during claimed period. We further request that Claimant receive travel time pay at the two minutes per mile rate for all such travel.”

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 record shows that on June 8, 1994 the Carrier bulletined a Truck Driver position requiring that the successful bidder be DOT qualified. The Claimant submitted a bid for the position. At the time that he did so, he possessed a CDL license. However, he had not yet taken the requisite DOT examination. Thus, another, junior employee was awarded the position. The record further reflects that the Claimant successfully completed the requisite examination on June 23, 1994.

The Organization first contends that the Carrier improperly required that the successful bidder for the position in question be DOT qualified. In the alternative it argues that even if the Carrier could do so, it violated the Agreement when it did not permit the Claimant a reasonable amount of time to take the DOT examination, a requirement he fulfilled shortly after the bulletin. Finally, it points out that in doing so the Carrier discriminated against the Claimant, because it permitted other employees to qualify for positions in this fashion.

We find it unnecessary, however, to deal with any of these contentions because, as the Carrier argues, the record establishes that at the time the bulletin issued the Claimant was not medically qualified to assume the position in question and that he did not become medically qualified until three months later. In rebuttal the Organization

contends that the Carrier did not raise this argument on the property. A review of the record discloses, however, that on August 16, 1994 the Director of Network Services wrote to the Vice General Chairman stating, inter alia, “. . . Claimant . . . was not qualified as the Medical Department was still reviewing his medical record and was still not . . . qualified as of August 3, 1994.”

In light of this fact the Carrier's failure to award the Claimant the position in question was not a violation of the parties' Agreement.

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.