

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 34017
Docket No. MW-31559
00-3-93-3-531**

The Third Division consisted of the regular members and in addition Referee Martin F. Scheinman when award was rendered.

PARTIES TO DISPUTE: (**Brotherhood of Maintenance of Way Employes**
(**Consolidated Rail Corporation**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier improperly disqualified Mr. M.D. Tallarida from his position as a mechanic on March 3, 1992 (System Docket MW-2641).**
- (2) As a consequence of the aforesaid violation, the disqualification shall be rescinded, all reference to the disqualification shall be removed from Mr. Tallarida’s record and he shall be compensated for all wage loss suffered.”**

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 Claimant, a mechanic on the Carrier's B&B maintenance gang, was disqualified effective March 4, 1992, after the Carrier discovered that his commercial driver's license ("CDL") had been suspended for one year. He was subsequently recalled to a B&B position at the Pavonia Diesel Terminal on July 2, 1992.

The Organization argues that mandatory possession of a valid CDL is not reasonably related to the Claimant's position. The Organization maintains, therefore, that the Claimant should not have been disqualified. It insists that driving is a minimal chore for mechanic gangs and any driving function could have been covered by the Claimant's co-workers. Indeed, according to the Organization, the CDL function for B&B mechanics only involves transportation to and from work locations. The Organization additionally asserts that if a significant amount of driving is ever required for the maintenance gang, the Carrier has the ability under the Agreement Rule 1 to establish a Vehicle Operator position.

The Organization, although recognizing that our decisions accord the Carrier the right to set qualifications for a job, including the right to determine that it wants employees in particular positions to possess valid driver's licenses, points out that those same decisions mandate that the Carrier have a rational basis for establishing its requirements. Here, the Organization argues, the Carrier provided no reason for requiring that the Claimant possess a valid CDL, and proffered no evidence of any similar disqualifications. Accordingly, the Organization maintains that the Carrier's actions are irrational, and constitute "de facto discipline" and disparate treatment.

The Organization asserts that the Carrier failed to demonstrate the necessity of a CDL for the performance of B&B mechanic duties, noting that driving is a minimal chore for maintenance gangs.

The Carrier, on the other hand, asserts that the decision disqualifying the Claimant was a proper exercise of managerial discretion. According to the Carrier, it has the prerogative to determine the classes and qualifications of employees it needs, and it therefore had the right to determine that B&B mechanics must be able to drive a boom truck in the performance of their duties. Because a boom truck weighs more than 26,000 pounds, Federal Motor Safety Regulations, Part 383, mandate that any driver of the truck possess a valid CDL. According to the Carrier, therefore, when the Claimant lost his driver's license for one year beginning March 1, 1992, he was no longer qualified for the position. The Carrier maintains, without dispute, that the

Claimant was aware of this requirement when he was awarded the mechanic position on February 19, 1992.

Further, the Carrier asserts that its determinations were reasonable. According to the Carrier, B&B maintenance gangs are typically small, creating the likelihood that each member of a gang will be required at some point to operate the boom truck. The Claimant's gang, the Carrier points out, consisted of three mechanics and one boom truck. The Carrier fairly determined that each gang member must possess a valid CDL so that there will be sufficient flexibility in the event one or more gang members is absent on a given day. Thus, the Carrier argues, it properly determined that a CDL license was one of the qualifications required for the B&B mechanic position. The Claimant was awarded the position after showing that he possessed the necessary requirements for the position. He was properly disqualified, the Carrier argues, when he no longer possessed one of those requirements.

In response to the Organization's argument that the Carrier should assign the driving work to employees classified as drivers, the Carrier points to decisions of this Board holding that the Rule 1 classifications do not constitute an exclusive grant of work to each classification, but rather were formulated to effectuate and protect rates of pay.

After reviewing the record evidence, we have determined that the Organization's claim should be denied. The cases uniformly hold that the Carrier retains the right to set qualifications for a job, provided it does so in a manner that is not arbitrary, discriminatory or capricious. It is not disputed on the property that the Claimant, when he was recalled from furlough on February 19, 1992, was required to possess a CDL. Thus, the Claimant cannot claim surprise.

Further, from our review of the record, we are persuaded that the Carrier had a rational basis for establishing the CDL requirement. Indeed, as the Carrier points out, its B&B maintenance gangs are small, and in order to maintain sufficient flexibility in the face of potential absences, it has determined that all its gang members must be qualified to drive the boom truck. In light of those considerations, we find nothing arbitrary about the Carrier's determination. See Third Division Award 26295. Nor is there record evidence supporting a claim of disparate treatment. Accordingly, the claim is without merit.

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.