

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35561
Docket No. MW-32606
01-3-95-3-548**

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

PARTIES TO DISPUTE: (**(Brotherhood of Maintenance of Way Employes**
(Burlington Northern Railroad Company (former Fort
(Worth and Denver Railway Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed and refused to assign Mr. L. A. Brown to the welder helper’s position (Position No. 52300) advertised within Bulletin No. FTW 18 during the period of September 16 through 25, 1994 (System File FP-94-IS/MWD 94-12-12AB FWD).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant L. A. Brown shall be ‘ . . . compensated for the 12 cents difference in rate of pay, from October 1, 1994 until the violations are corrected. I also request that Mr. Brown be awarded this job and his seniority as a welder helper be started as of October 1, 1994 and that he be given the opportunity to get his CDL on the earliest possible day.’”**

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.

Prior to being furloughed in April 1994, the Claimant worked as a Trackman in the Track Subdepartment and after his return from furlough in June 1994 he worked in the B&B Subdepartment. On September 16, 1994, the Carrier advertised a Welder Helper position at Texline, Texas, in Bulletin No. FTW-18, a position which required DOT-CDL qualifications. The Claimant submitted a bid for the job, together with a formal request to "complete his DOT-CDL qualifications" by being allowed to take the driving test. The Carrier rejected the Claimant's bid because he did not currently possess the CDL and rebulletined the job under date of September 30, 1994.

The Organization filed the instant claim on behalf of Brown, insisting that the Carrier had violated his contractual rights by denying his bid and/or failing to assist him in completing his CDL road test. The Claimant and the Organization asserted that at the time of the bid he had completed all of the other requirements for the CDL except for the road test. But in denying the claim on the property the Carrier countered noting that, as of February 1995, he still had not submitted to the Manpower Planning Office the following DOT-required documents: Safety Exam Form No. 16424, Experience and Qualification Form 16433, Certificate of Violations Form 16439, Certificate of Road Test Form 16442, Release Form 16443, acknowledgment that he received the relevant book of federal rules, and a copy of his driver's license. The propriety of the DOT-CDL requirement for the position to which the Claimant bid is settled and the record shows that the Claimant did not possess that required credential at the time of the bid. Finally, the record does not persuasively establish his contention that but for the Carrier's alleged failure/refusal to cooperate and/or assist in his efforts to take the road test he would have been CDL-qualified at the time of the bid.

AWARD

Claim denied.

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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 24th day of July, 2001.