

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 35598
Docket No. MW-33018
01-3-96-3-417

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Consolidated Rail Corporation)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed and refused to allow Mr. C. Presutti to displace junior Class 2 Machine Operator K. O'Donnell on a front end loader position on November 11 and 16, 1994 (System Docket MW-3832).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant C. Presutti shall be compensated at the Class 2 Machine Operator's rate of pay for all wage loss suffered beginning November 11, 1994 and continuing until the violation ceased.”

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.

Claimant Presutti, although without question the more senior employee on the roster as a Class II Machine Operator, was not permitted by the Carrier to displace Machine Operator O'Donnell on a front end loader position because the position, as previously advertised, required the occupant to possess a driver's license and the Claimant did not possess the requisite license.

The Organization maintains that the Claimant was entitled to exercise his seniority and displace a junior employee in accordance with Section 2 of Rule 4 when his position as a Class II Machine Operator (Tie Handler) was abolished on November 9, 1994. It also argues that the Carrier imposed requirement that this particular position of front end loader requires a valid driver's license is misplaced or of no force and effect in a contention that similar positions are filled with employees who do not possess a valid driver's license.

Contrary to the Organization argument, the Carrier maintains that the driver license requirement is necessary because the machine often leaves the work site and is driven on a public highway. In this respect, the Carrier submits that the machine was tagged (licensed and registered) so as to permit it to be driven over the highway, and that the machine in question regularly operates between Conway Yard and the stone pit in New Brighton, Pennsylvania, over public roads.

With respect to the Organization's argument that the Claimant holds a vehicular State of Ohio license, and that Ohio does not require a driver's license to operate a front end loader, it is noteworthy that the Carrier made the unrefuted statement during appeal of the claim on the property that the over public road operation of the machine is in the State of Pennsylvania, or, principally, a state that requires the operator of the front end loader to be licensed. Thus, the fact that the State of Ohio does not require a license to operate a machine such as a front end loader must be viewed as having no bearing on the dispute here at issue.

In regard to further Organization argument that the Carrier has allowed other employees to operate front end loaders without a driver's license, the record is devoid of evidentiary support for such a contention. Moreover, the record shows that during handling of the claim on the property that in a letter of January 31, 1995 to the local vice chairperson that the Carrier requested that it be given a list of other employees currently working who did not possess the proper license requirements so that it could

investigate the allegation. The Organization is not shown to have thereafter provided the requested listing.

Because the Board finds nothing of record to show that the Carrier actions were arbitrary, capricious or discriminatory in either initially prescribing that the applicant for the position in question possess a currently valid driver's license or in determining that the Claimant did not meet such a qualification, we have no alternative but to deny the claim for a lack of merit or agreement support of record.

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 24th day of July, 2001.