

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 38952
Docket No. MW-37373
08-3-NRAB-00003-020407
(02-3-407)

The Third Division consisted of the regular members and in addition Referee Dennis J. Campagna when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(BNSF 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 refused to allow displaced employe M. W. Dale to exercise his truck driver seniority to displace junior employes on the truck driver's position at Hysham or Hardin, Montana beginning on February 7, 2000 and continuing (System File B-M-742-F/11-00-0232 BNR.)
2. As a consequence of the violation referred to in Part (1) above, Claimant M. W. Dale shall now receive eight (8) hours' pay . . . “for each claimed date and be made whole for any and all losses including any and all overtime worked by the junior employee until violation ceases and claimant is allowed to displace on a truck drivers position that works within the State of Montana.”

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, with Sectionman seniority dating from April 1979, holds seniority within various sub-departments of the Maintenance of Way and Structures Department as a Truck Driver, Grinder, Rail Plant Laborer, Rail Plant Grinder, Machine Operator Group 1, and Machine Operator Group 2. During the Claimant's employment, he worked a variety of positions, most recently as a Crane Operator. As a result of force reductions, the Claimant was displaced from his position and in or about February 2000 attempted to exercise his seniority to displace the Truck Driver position at either Hysham or Hardin, Montana. The instant claim arose following the Carrier's denial of the Claimant's request to displace on the two noted positions, each of which required incumbents to be DOT qualified. The Claimant had been DOT qualified and worked positions that required DOT certification. However, in December 1992, the Claimant was diagnosed with Type 1 Diabetes. In or about January 2000, the Claimant underwent a DOT physical and was unsuccessful in renewing his DOT certification because of his diabetes. The Claimant was, however, able to maintain a Commercial Drivers License (CDL) to operate vehicles in the State of Montana.

The instant dispute before the Board arose when the Claimant, who held seniority over the Truck Drivers he attempted to displace, was denied the opportunity to do so as a direct result of the Carrier's requirement that all of its Truck Drivers hold DOT certification. The Organization does not dispute this stated requirement, but maintains that the Claimant's CDL license made him fully capable of driving routes solely in the State of Montana. The Organization further asserts that in those "limited" instances where the Claimant might be required to drive out of State, the Carrier could assign a driver who holds DOT certification as a "reasonable accommodation" to the Claimant who is disabled due to diabetes.

The Organization relies primarily upon Rule 8E in support of its position. Rule 8E states, in relevant part, that "Except as otherwise provided for in these rules, when forces are reduced or positions abolished, employees affected will have the right to exercise their seniority rights over junior employees. . . ."

The Carrier asserts that applicable state and federal laws require employees who drive vehicles greater than 26,000 lbs. Gross Vehicle Weight (GVW) to be DOT certified and possess a CDL. By policy promulgated in or about June 1999, the Carrier began requiring the DOT/CDL requirements on all bulletins for positions that might be required to operate such a vehicle unless required otherwise by a specific provision of the Agreement. Following a careful review of the Rules cited by the Organization in support of its position, the Board could find no specific terms that explicitly preclude the Carrier from insisting that any of its employees who drive trucks possess DOT certification as a threshold requirement for holding such position.

It is well established that where otherwise not specifically prohibited by the Agreement, Carriers have the inherent managerial authority to establish duties, responsibilities, and qualifications for positions. (See, e.g., Third Division Awards 36117, 37846, 37951, 38040.) This principle has been applied to situations not unlike the instant matter where the Carrier has established the holding of DOT certification as a prerequisite to job assignment. (See Third Division Awards 36117, 37846, 37951, 38040.) These Awards uphold management's prerogative to require DOT certification as a threshold requirement for a positions so long as there is a rational basis for doing so and it is reasonably related to the duties of the position.

The record established on the property supports the fact that a Truck Driver may be required to operate a vehicle interstate, thereby requiring DOT certification. In addition, it was established during the Claimant's Unjust Treatment Hearing that finding another driver to replace the Claimant during interstate runs could result in "undue stress" on the Carrier particularly during emergency situations or during those instances where the Carrier is shorthanded. On this record, therefore, the Board finds it reasonable for the Carrier to have required the possession of DOT certification as a requirement for the position of Truck Driver.

Finally, the Board reviewed the Organization's arguments and cases and respectfully finds that they are not contrary to the conclusion reached. Thus, for example, the record reflects the fact that the State of Montana's Human Rights Bureau found no reasonable cause to believe that the Claimant had been discriminated upon due to his status as a diabetic. In reaching this conclusion, that Bureau noted that under the facts of his case, the Claimant had not shown that he was "disabled" because he was unable to demonstrate that his diabetes substantially limited him in a major life activity. Accordingly, the Organization's claim that the Carrier should have reasonably accommodated the Claimant's disability has no support in the record. Finally, having reviewed Public Law Board No. 4768, the Board cannot find support for the position taken by the Claimant. In Public Law Board No. 4768, the Carrier required that the Claimant, who suffered from a form of epilepsy and held a position as a Grinder Operator assigned to a two-person welding gang consisting of a Welder and Grinder Operator, be DOT certified. Because the Welder was required to be DOT certified, the Carrier required the Claimant as a Grinder Operator to be DOT certified as well. The Board found the imposition of this requirement on the Claimant to be arbitrary because there was no showing that his job performance would be impaired or DOT regulations ignored if the welding crew continued to rely on vehicle operation by other than the Claimant. The distinguishing factor in Public Law Board No. 4768 that separates it from the case before the Board was the incidental and unfounded nature of the DOT requirement in Public Law Board No. 4768. Unlike the Claimant in Public Law Board No. 4768, the Claimant in the case before the Board aspires to drive a truck that may on occasion be required to transport goods and services interstate for which the possession of DOT certification is a Federal requirement.

On this record, therefore, it is undisputed that an incumbent holding the position as Truck Driver could be required on occasion to operate his vehicle interstate thereby requiring DOT certification. We find the Carrier's requirement that Truck Drivers possess DOT certification as a prerequisite to the holding of such position to be reasonable and the instant claim must be denied.

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 29th day of February 2008.