

**Form 1**

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 39647  
Docket No. MW-37892  
08-3-NRAB-00003-030292  
(03-3-292)**

**The Third Division consisted of the regular members and in addition Referee Susan R. Brown when award was rendered.**

**PARTIES TO DISPUTE: (**  
**(Brotherhood of Maintenance of Way Employees**  
**(BNSF Railway Company (former Burlington**  
**( Northern Railway Company)**

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

- (1) The Agreement was violated when the Carrier removed Mr. J. G. Berreman from his assigned welder position on Gang RW-15 on August 27, 2001 and continuing (System File S-P-898-O/11-02-0002 BNR).**
- (2) As a consequence of the violations referred to in Part (1) above, Mr. J. G. Berreman shall now ‘. . . be returned immediately to the welder position on RW-15 and made whole for all loses (sic), this including but not limited to the difference in pay between what he was working (welder) and what he had to bump (grinder), and and all overtime in which the welding crew on RP-15 works and his \$1000.00 bonous (sic) for six months continuous service with a mobile gang. This to continue until Mr. Berreman is returned to that position. We also ask for the time, mileage and expenses incurred for this move.”**

**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 bid for and was awarded a Welder position on Mobile Gang RP-15 on December 15, 2000 with a start date of April 2, 2001. The bulletin required the successful bidder to be DOT qualified and hold a CDL license. The Claimant worked almost five months on the position without any problem before he was removed from the position on August 27, without notice, and placed on a Grinder position.

The record before the Board is filled with allegations and assertions by both parties regarding the circumstance surrounding these events, but contains no evidence to support the assertions. The Carrier contends that the Claimant held the required certifications when he was initially awarded the bid, but produced no evidence to support this assertion. The Carrier also contends that the Claimant's medical certification lapsed sometime in August, making him no longer able to hold the position, but it provided no evidence of that fact. The Organization makes no claim with respect to the Claimant's certification status when he was awarded the bid. It asserts, however, that he procured a temporary DOT medical card within two weeks of being removed from his Welder position, but produced no evidence to that effect. In fact, there is no evidence that the Claimant ever notified the Carrier of his restored eligibility.

In light of this record, or lack thereof, the Board is unable to issue a reasoned analysis with respect to how the Agreement may be applied to the facts. As it is the Organization's burden to prove its case, the claim must be dismissed.

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**AWARD**

**Claim dismissed.**

**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 22nd day of April 2009.**