

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40084
Docket No. MW-38345
09-3-NRAB-00003-040284
(04-3-284)**

The Third Division consisted of the regular members and in addition Referee Steven M. Bierig when award was rendered.

PARTIES TO DISPUTE: (
(Brotherhood of Maintenance of Way Employes
(Union Pacific Railroad Company (former Chicago and
(North Western Transportation 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. C. Gatewood to the truck driver ‘Common’ position on Bulletin Number 3801, for a boom truck headquartered at Eagle Grove, Iowa on April 4, 2003 and instead assigned junior employe J. Foth (System File 2RM-9444T/1364783 CNW).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant C. Gatewood shall now “*** be compensated for the 1358 miles at \$.36 per mile (\$488.88), twenty-seven (27) hours of time that he expended driving to the various locations as cited, any overtime hours the boom truck position worked and the \$.31 per hour differential in pay for all hours worked, at the applicable rates of pay.”**

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 C. Gatewood established and holds a service date of September 2, 1975 in the Maintenance Way Department with a seniority date of September 13, 1983 as a Machine Operator Common.

On March 27, 2003, pursuant to Vacancy Bulletin No. 3801, the Carrier bulletined the position of Truck Operator Common operating a boom truck (pay rate of \$18.67 per hour) headquartered at Eagle Grove, Iowa. On the same date, by Vacancy Bulletin No. 3802, the Carrier also bulletined a Class "B" Machine Operator position operating a brush cutting machine (pay rate of \$18.36 per hour) headquartered at Des Moines, Iowa. It is uncontested that the Claimant placed a bid on both positions and designated the Boom Truck Operator as his first choice and the Machine Operator as his second choice. When the positions were assigned on April 4, 2003, the Claimant was awarded his second choice and junior employee J. Foth was assigned to the Boom Truck Operator position. Foth's Machine Operator Common seniority date is April 9, 1999.

According to the Organization, although the Claimant was senior to Foth and placed a proper bid on the vacant Boom Truck Operator position, the Carrier improperly assigned junior employee Foth to the position in question. The Organization claims that as a result of the Carrier's actions, the Claimant lost wages (\$.31 per hour) and incurred undue and unreimbursed personal expenses for each claim date, totaling 27 hours of time and the mileage (1,358 miles x \$.36 per mile = \$488.88) accrued driving his personal vehicle between his residence in Eagle Grove, Iowa, and his work location as a Machine Operator.

Conversely, the Carrier takes the position that the Organization cannot meet its burden of proof in this matter. It contends that while it is uncontested that the Claimant was senior to Foth, the Claimant was not qualified for the Boom Truck Operator position because he failed to pass the look-out portion of his required Rules exams. Thus, while the Claimant was the senior bidder, he was not the senior qualified bidder and for safety reasons, the Carrier had the right to not award him the Boom Truck Operator position.

The Board concludes that the Organization has been unable to meet its burden to prove that the Claimant should have been awarded the Boom Truck Operator position. The Board finds that passing the look-out test is reasonably related to the position of Boom Truck Operator. The look-out requirement is an important part of the on-track safety qualifications established as a joint effort between the Carrier, the Organization and the FRA. Thus, we cannot find that the Carrier acted unreasonably in denying the Claimant the Boom Truck Operator position.

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 November 2009.