

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40103
Docket No. MW-40482
09-3-NRAB-00003-080252**

The Third Division consisted of the regular members and in addition Referee Sherwood Malamud when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
PARTIES TO DISPUTE: (
(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. T. Sturz to the welder position as posted by Bulletin No. 5050 and instead assigned junior employe B. Haines effective September 29, 2006 (System File 7WJ-7502T/1466323 CNW).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant T. Sturz shall now be awarded the aforesaid welder position bulletin assignment and ‘. . . awarded a Welder seniority date of September 29, 2006. Further, Claimant must be compensated for the difference between the Welder rate of pay and Claimant’s rate of pay for all hours worked by Claimant subsequent to the September 29, 2006 effective date of assignment to Bulletin No. 5050 until such time as the assignment correction is made.’”**

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 Carrier refused to assign Claimant T. Sturz to a Welder position effective September 29, 2006 because he did not possess a Class B CDL license, a qualification the Carrier listed for this position in Bulletin No. 5050. The Carrier included this qualification, because the Welder would be required to operate a truck with a gross vehicle weight exceeding 26,000 pounds, which is sometimes placarded for hazardous material. The Carrier assigned junior employee B. Haines to the position.

Neither Haines nor the Claimant had obtained seniority as a Welder. Neither candidate was qualified in the class as required by Rule 16 I. Stated differently, the Carrier received no application from a qualified applicant of this class. Therefore, the Carrier filled the position in accordance with the terms of the second paragraph of Rule 16 I, which provides:

“If no such qualified applications are received, then the position shall be filled by assigning the senior qualified applicant of the next lower class, successively, until vacancy is filled.”

The Organization argues that the Carrier should have afforded the Claimant a 60-day period on the position to obtain the CDL license. The Carrier's action undermined the Claimant's seniority rights. Rule 16 provides that the senior qualified employee should be selected to fill the vacancy. Under Rule 15, the Claimant's fitness and ability were sufficient to fill the position. As the senior applicant, the Carrier should have placed applicant in the vacancy.

The Board concludes that there is no Rule that prevents the Carrier from establishing a reasonable qualification for a position. See Public Law Board No.

6792, citing Third Division Awards 35010 and 26295 on this very point. It may require that only employees holding a valid CDL license may fill the position. Because the Carrier may reasonably anticipate that the occupant of the Welder position, at issue, would be required to drive the welding truck, the operator of that truck must hold a Class B CDL license. Accordingly, it was reasonable for the Carrier to impose that qualification.

Bulletin No. 5050 requires the qualified applicant to possess the license. It does not permit the applicant to be eligible to obtain the license. See on-property Public Law Board No. 5514, Award 69, as well as Public Law Board No. 7097, Award 3.

Because the Claimant did not meet a qualification for the position, i.e., he did not possess a Class B CDL license, the Organization failed to prove that the Carrier's action violated any Rule. Accordingly, the claim is denied.

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.