

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 40939  
Docket No. MW-41035  
11-3-NRAB-00003-090383**

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

**PARTIES TO DISPUTE:** (Brotherhood of Maintenance of Way Employees Division -  
( IBT Rail Conference  
(  
(Union Pacific Railroad Company (former Missouri  
( Pacific Railroad 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 allow Welder Helper D. Buentello to exercise his seniority onto a welder helper position on Gang 8724 on February 18, 2008, and continuing through February 22, 2008. (System File MW-08-60/1502573 MPR).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant D. Buentello shall now be compensated for forty (40) hours at his respective straight time rate of pay and at his respective overtime rate of pay for all overtime hours worked on the aforesaid welder helper position on February 18, 2008 through February 22, 2008.”

**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 issue raised by this claim is whether the Carrier acted in compliance with the Agreement when it refused to let the Claimant displace a Welder Helper position on Gang 8724 until it had proof of his qualifications. The Claimant's Welder Helper position on Gang 2390 was abolished on January 25, 2008, he worked as an extra man on another gang until he displaced onto the disputed Welder Helper position on February 13 but was informed on February 15, 2008, that it was an illegal bump because he did not possess the CDL HAZMAT endorsement for this position. On the property the Organization asserted that the Claimant had such endorsement, needed it on his prior job, and that it was a problem with the Carrier's DOT office record-keeping that prevented him from affecting the bump. Documents furnished by the Carrier confirm that a HAZMAT endorsement was not required on the Claimant's previous Welder Helper position and his record indicated that he had furnished proof of such endorsement on February 21, 2008. After receiving such proof, the Claimant was awarded the position. This claim seeks monetary compensation for the five days the Claimant was prevented from working on this Welder Helper position.

The Organization argues that the Claimant, in fact, met the qualifications for the position at the time of the displacement, but that he had no control over the Carrier's managerial staff failing to keep accurate and complete records. It asserts that there was a denial of the Claimant's valuable seniority rights in this case, for which he is entitled to a remedy, citing Second Division Award 2910.

The Carrier notes that it is uncontested that the CDL and HAZMAT endorsement requirements for the position were proper, and contends that the Claimant failed to show that he had such endorsement at the time he attempted to displace onto this Welder Helper position. The Carrier asserts that it is not its responsibility to notify an employee that he does not have such endorsement before he attempts to bump onto a position requiring it, and that part of the Claimant's qualification is to keep the Carrier informed of his current endorsements and licenses. The Carrier submits that as soon as the Claimant furnished it proof that he had the required HAZMAT endorsement, he was permitted to displace onto the position. It relies upon its right to determine qualifications and fitness and ability and the Organization's failure to meet its burden of proof in urging that this claim be denied.

A careful review of the record convinces the Board that the Organization failed to meet its burden of establishing a violation of the Agreement in this case. There is no dispute concerning the propriety of the CDL and HAZMAT endorsement qualifications for the Welder Helper position the Claimant attempted to exercise displacement to in mid-February 2008. Because the Carrier's records showed that the Claimant did not have the required endorsement at the time of displacement and that he did not need it on the position he was coming from, it was incumbent upon the Organization to establish that, in fact, the Claimant did have such qualification and that he notified the Carrier of that fact prior to the time it was determining whether his bid was proper. It did not meet such burden. The record contains no evidence showing that the Claimant's current HAZMAT qualification predated February 21, 2008. There is no statement from the Claimant indicating when he obtained such endorsement and that he notified the Carrier of that fact, or that it was the fault of the Carrier's administrative staff for not keeping its records current. In the absence of such evidence establishing his qualifications at the time of the displacement, and considering the fact that the Carrier awarded the position to a person who had the necessary qualifications, this claim must fail.

**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 March 2011.