

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41504
Docket No. MW-41586
13-3-NRAB-00003-110192**

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

(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference

PARTIES TO DISPUTE: (

(Union 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 Group 26 System Gang Truck Driver K. Gosser to displace a junior truck driver on Gang 8778 on December 19, 2009 (System File D-0921U-207/1530917).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant K. Gosser shall now ‘. . . be compensated for time lost from December 19, 2009, through the end of the second half work cycle for Gang #8778, because he was denied the exercise of seniority. Further, we request that Claimant Gosser be compensated for the difference in pay between the fuel truck driver position he was denied, and the subsequent lower rated position he ultimately displaced to. We further request that Claimant be paid expenses equal to the published IRS mileage rate for his actual travel to Caliente NV and home. Included in these expenses is the daily per diem Claimant would have otherwise been entitled to, but was denied because his bump was improperly disallowed. This claim is considered continuing until the violation ceases and Claimant’s

displacement is reinstated and he is allowed to work the position for which he had a right.”

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 Organization argues that the Carrier improperly denied the Claimant's displacement onto a Fuel Truck Operator position on Gang 8778. The Carrier countered that the reason the Claimant was not allowed to displace was because of his driver's license. The position requires a Commercial Drivers License (CDL) with a HazMat and Tank Vehicle endorsement. According to the Carrier, the copy of the Claimant's CDL on file was illegible.

The Board reviewed the record evidence. The dispute arose because the Carrier would not allow the Claimant to displace because it had no legible copy of his CDL on file to show that he was qualified to operate the fuel truck in accordance with the applicable regulations. The only copy of the Claimant's CDL in the record is the copy from the Carrier's records. It is indeed illegible.

It appears to the Board that the solution in the instant case would have been straightforward – submit a clean, legible copy of the Claimant's CDL as proof that the Claimant had the required HazMat and Tank Vehicle endorsements. There is none in the record. Accordingly, the Carrier did not violate the Agreement when it

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refused to permit the Claimant's displacement to a Fuel Truck Operator position on Gang 8778 and the claim must be 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 February 2013.