

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41564
Docket No. MW-41424
13-3-NRAB-00003-100203**

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 System Truck Driver Foreman B. Woolsey to displace junior System Truck Driver Foreman M. Syracuse on Gang 9074 on January 5, 2009 and continuing (System File D-0921U-201/1516932.)**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant B. Woolsey shall now ‘. . . be compensated for the days he was denied work opportunity on Gang #9074, and subsequently forced to exercise seniority elsewhere. Further, Claimant Woolsey shall be compensated the difference in pay between the position he is currently working and the position of Group 26 Truck Driver Foreman for which he has been denied. Specifically, Claimant shall be paid sixteen (16) hours at the respective Truck Driver Foreman straight time rate of pay for the work opportunity denied on January 5th and 6, 2009 when he was not allowed to displace and work. Claimant shall also be compensated the difference in rates of pay for as long as he is denied the opportunity to displace and work the grieved position. ***”**

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 evidence establishes that the Claimant sought to displace a Truck Driver Foreman with less seniority on Gang 9074. The Carrier refused the displacement.

According to the Organization, the Claimant possessed both the seniority and qualifications to perform the work of a Truck Driver Foreman on the production gang. In support during the handling, the Organization submitted a statement from the Claimant that provided in pertinent part:

“I worked as a SYS-Truck Driver Foreman on Gang 8533 OFF DAY GANG for MTP Kip Petterson from 01-01-05 to 07-07-05 and Supervisors under his direction . . . this gang was responsible FOR THE UPKEEP OF THE GANG MOVING OTM FROM JOB TO JOB WASHING AND SERVICING MACHINES ENSURING TRUCKS WERE SERVICED INSPECTED/CLEANED FOR THE OPERATION OF THE GANGS. I WAS RESPONSIBLE FOR KEEPING TRACK OF TIME, SPIKES, TIES, PLATES, FUEL FILTERS, FUEL AND THE EMPTY RELEASE OF GONDOLAS OUR [sic] BILLING THEM TO THE PROPER SIDING CLOSEST TO JOB SITE. I SPOKE WITH MR. HAVERSTICK THE FIRST WEEK IN JANUARY . . . [AND] ANNOUNCED MY INTENTIONS TO DISPLACE THE TRUCK FOREMAN ON GANG 9074. MR. HAVERSTICK ADVISED ME THAT THIS FOREMAN WAS MORE THAN A TRUCK FOREMAN HE WROTE DISCIPLINE AND REQUISITIONED MATERIAL FOR THE BUILDING AND

MANAGING OF THE BUDGET FOR THIS WORKGROUP. HE HAD ASKED ME IF I KNOW HOW TO PERFORM THESE DUTIES I ADVISED HIM THAT I DID NOT. HE THEN ADVISED ME THAT HE WOULD NOT ALLOW ME TO DISPLACE HIS FOREMAN."

The Carrier replies that, although the Claimant has the seniority, he does not have the qualifications for the position and Rule 21 clearly requires that both seniority and qualification can be considered. In support of the position that the Claimant was not qualified, the Carrier points to the email statement of Haverstick to Labor Relations personnel dated February 12, 2009, which states:

"Claim should be denied. The scope of the work required was within a Foreman's duties. In addition, in the interview with Mr. Woolsey there never was any requirement that he do anything with projects as part of this job. I ask[ed] him if he could requisition material, build for drivers and manage budgets, schedule trucks, train drivers and other duties as required. He said he could not do all of these basic requirements, so he was denied the bump."

The Organization counters that the Carrier is requiring qualification outside the class. These additional qualifications are not contemplated by the Truck Foreman position and are an attempt to thwart seniority with special qualifications. The Carrier countered that the qualifications are within the scope of Rule 6, wherein it states:

"An employee who is assigned to the duties and responsibilities of supervising, instructing or assisting in the work of employees assigned under their jurisdiction. Since it is recognized that all supervisory employees are authorized to perform clerical work such as making out necessary reports and payrolls as well as studying prints and standards during the regular hours of assignment, such employees will not be compensated for performing such duties during recognized overtime hours."

The Claimant's statement indicates that he was assigned as a Truck Foreman for the first half of 2005. The Carrier does not dispute that the Claimant has previously performed the duties of a Truck Foreman when in that assignment. However, Manager Haverstick's statement also indicates that the Claimant stated that he could not

perform the requirements of the position including requisitioning material, build for drivers, manage budgets, and schedule trucks and train drivers. The Carrier argues that it did not violate the Agreement because the Claimant indicated that he could not perform the required duties. The Carrier has the right to maintain certain qualifications for the assignment so long as it does not conflict with the Agreement.

The Organization does not deny that the Claimant stated that he could not perform the duties described above. Rather, the Organization maintains that the duties were improper for the assignment. The Organization argues that the Carrier was simply adding job duties in an effort to shortcut the seniority Rules.

The Board carefully reviewed the record evidence and finds that the Organization failed to prove a violation of the Agreement. The Claimant stated that he could not perform the qualifications of the assignment. The Carrier was not acting in an arbitrary or capricious manner when it denied the displacement. The Carrier can consider seniority and qualifications for positions. The Organization failed to produce sufficient evidence to substantiate its argument that the Carrier's qualifications discussed above were improper.

The Board finds that the Organization failed to meet its burden of proof. Accordingly, 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 18th day of March 2013.