

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 41641
Docket No. MW-41569
13-3-NRAB-00003-110183

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 Truck Operator E. Kreiling to exercise seniority displacement rights onto the Gang 9105 Truck Operator position on December 19, 2009 and continuing (System File UP603BT10/1529531 MPR).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant E. Kreiling shall now be compensated at the applicable truck operator's rate of pay for all straight time and overtime hours worked by any junior employee on the aforesaid Gang 9105 Truck Operator position beginning December 19, 2009 and continuing.”

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.

This claim protests the Carrier's refusal to allow the Claimant to displace onto a Truck Operator position on Gang 9105 on December 19, 2009 for lack of qualification. The Claimant was displaced from his Truck Operator position on Gang 9219 on December 6 and continued to work extra on that gang until December 21, 2009. His attempted displacement was to a two ton & crew truck position contained in Bulletin No. GSST04506, listing boom and hy-rail Operator certification qualifications, along with air brake and five ton & large vehicle qualifications. While initially asserting that the Claimant lacked the air brake qualification, the Carrier eventually clarified that the Claimant was denied the displacement because he did not possess the boom certification. The Claimant successfully bid on a Truck Operator position on Gang 9116, and commenced working on that position operating a two ton & grapple truck on December 24, 2009. The Bulletin for that position (No. GSST04525) does not require a boom certification.

The Organization argues that the Claimant was improperly denied his seniority right to displace onto the Gang 9219 Truck Operator position, which he was qualified to perform, noting his extensive training and certification records and his prior experience operating on similar positions. It seeks the compensation (including per diem) that the Claimant would have earned had he been permitted to exercise his seniority under the Agreement.

The Carrier contends that the Organization failed to meet its burden of proving a violation of the Agreement. It points out that Carrier has the right to place proper qualifications on positions, which it did in this case, and that once it determines that an employee is not qualified, it is the employee's burden to come forward to prove his qualification. The Carrier notes that none of the documentation provided proves that the Claimant had the requisite boom certification to operate the crew truck involved. It also argues that the remedy requested by the Organization is excessive, because the Claimant had no loss of earnings between his displacement and the commencement of his new position, and that per diem is only payable to offset actual expenses while working away from home, citing Third Division Award 40102. Moreover, the Claimant was not assigned to an on-line gang and did not incur such expenses.

A careful review of the record convinces the Board that the Organization did not meet its burden of proving a violation of the Agreement. There was no contention by the Organization, nor any showing, that the boom certification qualification listed on Bulletin No. GSST04506, with reference to the crew truck position in dispute, was improper or unrelated to the requirements of the job. The documentation of the Claimant's training and qualifications provided by both the Organization and the Carrier, and belatedly sent by the Claimant, do not clearly establish that the Claimant had any boom certification. There is no doubt that he was qualified for many other truck operator positions, as seen from his successful bid on the grapple truck position on Gang 9116 a few days later, and his years of operating trucks on different positions. However, absent a showing that the Claimant had the required boom certification, or that such qualification was arbitrary and not related to the performance of the job, the Board must conclude that the Carrier did not violate the Agreement or the Claimant's seniority rights when it denied his request to displace onto the crew truck operator position on December 19, 2009. See, Third Division Award 40939.

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 April 2013.