

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41642
Docket No. MW-41584
13-3-NRAB-00003-110182**

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

**(Brotherhood of Maintenance of Way Employes Division -
(IBT Rail Conference**
PARTIES TO DISPUTE: (
(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 improperly disqualified and removed Foreman J. Shields from his position on Switch Gang 9118 after his displacement thereto on October 10, 2009 and continuing (System File UP618BT09/1529535 MPR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. Shields ‘. . . shall now be paid for twenty-four (24) hours at his respective rate of pay (as well as credits and benefits flowing there from) as well as mileage one thousand four hundred (1400) for driving his personal vehicle to make his displacement. ***’”**

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 addition of the Brandt truck air brake qualification to the Foreman position on Switch Gang 9118 at the time the Claimant displaced onto that position on October 10, 2009, and its subsequent disqualification of the Claimant from that position due to his inability to perform the air brake test, after he had driven 1400 miles to make the displacement on the basis of information received from the Carrier's NPS.

The Organization argues that the Claimant was qualified for a switch gang Foreman position, which he had held for more than two years until he was displaced in early October 2009, and that he was advised by Non-operating Personnel Services (NPS) that he could make the disputed displacement. It notes that, on the basis of that information, the Claimant drove 1400 miles to Switch Gang 9118 where, upon making the displacement onto the Foreman position, the Supervisor informed him that he was required to pass the Brandt truck air brake test, which he was unable to do. The Organization objects to the addition of such qualification, noting that the Brandt truck is not even assigned to Switch Gang 9118, that such qualification is required of the Brandt Truck Operator, and that conducting air brake tests is unrelated to the performance of the Switch Gang Foreman position in question, so adding such qualification is arbitrary and cannot be enforced, citing Special Board of Adjustment No. 956, Award 16, as well as Third Division Award 29851. It requests compensation for the Claimant's loss of earnings occasioned by the improper disqualification, as well as compensation for the 24 hours it took him to drive his personal vehicle to make the displacement and his mileage.

The Carrier contends that the Organization failed to meet its burden of proving a violation of the Agreement. It notes that management has the prerogative to determine qualifications necessary for a position as well as the skill and ability of

the employee, and that the Organization must prove that such determinations are arbitrary in order to be successful in challenging the resultant disqualification, relying on Third Division Awards 21615, 27895 and 36957. The Carrier points to the statement of Manager Howard indicating that the gang works with Brandt trucks unloading their material and the Foreman must be able to assist with the switching of cars and the air brake test, as the rational basis for the Brant truck air brake qualification, and asserts that the Organization admits that Switch Gang 9118 works with Brandt trucks in the performance of their duties. The Carrier also argues that the Claimant is not entitled to a monetary remedy because he had no loss of earnings, inasmuch as he immediately displaced onto a different Foreman position. Moreover, traveling to exercise ones seniority is without expense to the Carrier.

A careful review of the record convinces the Board that the Organization failed to meet its burden of establishing that the addition of the Brandt truck air brake qualification to the Switch Gang 9118 Foreman position was arbitrary and unrelated to the performance of the job duties of the position. While the Organization contended that the Brandt truck was not assigned to the gang, it admitted that this switch gang regularly works with a Brandt truck in the performance of its duties. The fact that the Brandt Truck Operator must have an air brake certification does not, per se, negate the arguable reasonableness of requiring the Foreman to be able to perform air brake tests of this equipment in order to competently assist the Brandt Truck Operator and assure that the job is properly and safely performed. The Organization did not show that the Foreman of the gang to which the Brandt truck belonged was present on the job site when Switch Gang 9118 was working with the Brandt truck. Thus, we cannot accept its argument that this was not the appropriate Foreman to require the air brake qualification, or find that such argument undermines the rationale for requiring this qualification from the Foreman charged with assuring that Switch Gang 9118 properly performs its duties. Under these circumstances, the Board concludes that the addition of the air brake qualification was not arbitrary. Because the Claimant was given the opportunity to perform an air brake test on the Brandt truck and, admittedly, could not do so, we are unable to accept the Organization's position that he was improperly disqualified from the Switch Gang 9118 Foreman position in October 2009. Accordingly, the claim must be denied.

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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.