

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 41703  
Docket No. SG-41632  
13-3-NRAB-00003-110297

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

**PARTIES TO DISPUTE:** (Brotherhood of Railroad Signalmen  
(National Railroad Passenger Corporation (Amtrak))

**STATEMENT OF CLAIM:**

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the National Railroad Passenger Corp.:

Claim on behalf of L. I. Troy, Jr. to be awarded the position he was denied and to be compensated for all lost work opportunities afforded to a junior employee beginning October 14, 2009, and continuing until this claim is resolved. Account, Carrier violated Rules 5, 11, and 12 when it awarded the position to a junior employee instead of the Claimant. Carrier’s File No. BRS-SD-1138. General Chairman’s File No. AEGC-106-10-1. BRS File Case No. 14475-NRPC(S).”

**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 dispute involves a challenge to the Carrier's determination that the Claimant was not the senior qualified bidder on Advertisement No. 036-SD2-1009, Maintainer - CDL "A" - with headquarters in Parksburg, Pennsylvania, posted on October 6, and awarded to junior employee Ware on October 14, 2009. The claim relies upon Rules 5 (Seniority), 11, and 12, the pertinent portions of which appear below.

**"RULE 11 - QUALIFICATIONS**

(a) Assignments to positions of . . . Maintainer . . . shall be based on ability, fitness and seniority; the ability and fitness being sufficient, seniority shall govern.

**RULE 12 - BULLETIN AND ASSIGNMENT**

(a)           \*       \*       \*

An advertised position will be awarded within ten (10) days after the close of the advertising period to the senior qualified bidder . . . ."

The Claimant is a 15-year employee who was working as a Signal Maintainer on District 2 at the time of the posting at issue. He had bid on a job that did not require a CDL license and taken himself out of the driver's pool in April 2009. When he bid on this CDL job, the Pennsylvania driver's license on file with the Carrier was expired. However, apparently, the Claimant had in his possession a CDL valid until April 2013 and a current DOT medical certificate, neither of which he had forwarded to the Carrier to update his file as required by federal law. Despite being the senior employee, he was found not to be qualified for the position because he was not in the driver's pool and did not have the required CDL at the time the position was awarded on October 14, 2009. In its initial appeal the Organization asserted that the Claimant presented the proper documentation to the Carrier the day following the award for correction, and attached the documentation to the appeal. However, the Carrier's denial of the claim asserted that the Claimant

did not complete the process of reestablishing his qualifications until November 12, 2009.

The Organization argues that the Carrier must abide by the seniority provisions of the Agreement, citing Third Division Awards 19758 and 4393, and is required to award a position to the senior qualified employee, which the Claimant was in this case. It asserts that the Carrier improperly relied upon a federal regulation that applies to new applicants, not the Claimant, and notes that the Claimant kept his CDL and medical certificate current, so he was technically qualified for the bid position. The Organization maintains that the Carrier should have awarded the Claimant the position pending a driving history inquiry, once it was made aware of his qualification.

The Carrier contends that because the Claimant removed himself from the pool of employees possessing valid CDLs, it was his responsibility to continue to provide to the Carrier, and have on record, the information required by federal law concerning his qualifications, which he failed to do. It points out that the Claimant was not qualified when he bid, or when the position was awarded, and he did not complete the process for reestablishing his qualifications until November 12, 2009 – one month after the senior qualified bidder was awarded the position on October 14, 2009. The Carrier argues that its judgment as to an employee's fitness and ability is to be upheld unless it is arbitrary or an abuse of discretion, which the Organization failed to prove in this case, relying on Third Division Awards 21119 and 21243.

A careful review of the record convinces the Board that the Organization failed to meet its burden to prove that the Carrier violated Rules 5, 11, or 12 in this case, when it determined that the Claimant was not a qualified bidder on the position at the time of his bid and its award of the position. It is undisputed that the record that the Carrier had on file at that time showed that the Claimant's CDL had expired, and that the Claimant failed to meet his obligation to notify the Carrier that he had a valid CDL and medical certificate when he bid on the job, despite the statement on the advertisement that proof of qualifications could be provided with the bid. According to the Carrier, the process of reestablishing qualifications to be entered into the CDL pool is not as simple as showing a valid license and medical certificate, or sending such documents to the appropriate Carrier office, because employees in the pool are subject to random drug tests in accordance with federal

law. Therefore, the Board concludes that the Carrier's determination that the Claimant was not the senior qualified bidder on Advertisement No. 036-SD2-1009 was neither arbitrary nor an abuse of its discretion, and there is no valid basis upon which it should be overturned.

**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 16th day of September 2013.**