

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42193
Docket No. MW-41985
15-3-NRAB-00003-120353**

The Third Division consisted of the regular members and in addition Referee Andria S. Knapp 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 to inform Mr. M. Daly, in connection with his inquiry as to where he could exercise his seniority following his displacement on February 17, 2011, that junior employee S. Smith was working on Gang 5441 at LaSalle, CO, or that junior employee T. Staman was working on Gang 5311 at Laramie, WY (System File D-1121U-201/1553176).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant M. Daly shall now be compensated “*** for all straight time hours missed because of the inaccurate/lack of information provided when the Claimant attempted to exercise his seniority. This amounts to eighty eight (88) hours at Claimant’s respective straight time rate of pay. ***”**

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.

In February 2011, the Claimant was working as a Sectionman on the Cheyenne, Wyoming, Section Gang, when he was displaced (bumped) by a more senior employee. The Claimant contacted the Personnel Department to see what his employment options might be and was told that the only position open to him with his qualifications was in Denver, Colorado – more than 100 miles from his residence. According to the statement he filed, the Claimant felt that he could not afford to take a position so far from home. He remained laid off from February 18 until March 7, 2011, when he took a position as a Section Truck Driver, pending bulletin assignment, on Gang 5311 in Laramie, Wyoming, (less than 50 miles from his residence). When the Claimant arrived at the job site, he learned that the prior incumbent on the Section Truck Driver position was junior to him in seniority, and that another junior employee was similarly employed on a gang based out of LaSalle, Colorado. The Claimant contacted the Personnel Department to inquire why he had not been told about the two positions, which he could have exercised his seniority to bump onto, and was told that he was not qualified for them because he did not have a Commercial Driver's License (CDL).

According to the Claimant, his CDL was scheduled to expire at the end of July 2010. He renewed it before the expiration date and faxed a copy of the renewal to the Carrier. It took several tries for a legible copy to go through but, the Claimant stated, he was eventually told that it had successfully gone through. A few days later, he checked the Carrier's on-line qualifications database, and it showed the renewal. The Claimant did not check the database again because he was under the impression that his CDL qualification was up to date. He never received notice from the Carrier that there was any problem with receipt of his CDL renewal, that his CDL had expired, or that he had been disqualified from positions requiring a CDL. When he contacted the Personnel Department in February 2011 after having been bumped from his position, he was not informed that the Carrier's records indicated that his CDL had expired, and only learned about the problem after he arrived to take up his new position on Gang 5311. In addition to several statements from the Claimant, the record also includes an unsigned document purporting to be a note from the "DRTS Phone Log," dated October 18, 2011. The note indicates that the Claimant's prior position required only a DOT certification – not a CDL. It also states: "Babbette reports

attempts to get his license in legible on multiple times July, August and after. Only recorded when mailed in certified on April 8”¹

The Organization contends that the Carrier violated Rule 21 of the Agreement when it failed to notify the Claimant of positions for which he was qualified and could have bid for. The Carrier responds that it is the employee’s obligation to ensure that his or her qualifications are up to date in its records. In February 2011, per its records, the Claimant was not qualified for any positions requiring a CDL, and he was informed of all positions for which he was qualified.

This is not a case in which the Organization is demanding that a position be awarded to an unqualified candidate. The record establishes that the Claimant timely renewed his CDL in July 2010. Not only did the Claimant state that he renewed his CDL in July 2010, but the note from the DRTS phone log confirmed that he had made multiple attempts to fax the renewal in at that time. The Board finds the Claimant’s statement that he was told the fax had finally gone through (whether it was in July or later) credible: the evidence from the Carrier is that he made multiple attempts to submit it, and knowing as he did that having a CDL was important to his employment, it is more likely than not that the Claimant would have continued to fax the document, or made alternate arrangements to submit it, if he continued to believe that the Carrier had not received it.

The Organization contends that, however it occurred, as of February 2011, the Carrier’s records regarding the Claimant’s CDL qualification were incorrect, and that the Carrier, not the Claimant, should bear the burden of failing to inform him then of available positions for which he was qualified. The Carrier responds that it is the employee’s obligation, not the Carrier’s, to ensure that his qualifications are up-to-date in its records. The Claimant failed to do that, so that the information NPS gave him about available positions was correct, based on his qualifications as shown in its records, and there was no violation of Rule 21 of the Agreement.

After reviewing the complete record, the Board is of the opinion that the Carrier and the Claimant are both responsible for his inability to obtain a position for which he was qualified when he was bumped in February 2010. The information in

¹ The note also indicates that the Claimant’s previous position (the one he was bumped out of) did not require a CDL, only a DOT certificate, which would explain how he was able to continue to work without a CDL from the end of July 2010 (when the Carrier was under the impression it had expired) until his displacement on February 17, 2011.

the Carrier's records regarding his CDL qualification was incorrect. According to the Carrier, the Claimant failed to send in a legible copy of his qualification. The DRTS note in the record establishes that the DOT knew that the Claimant was attempting to send in evidence of his CDL renewal, but it appears that no one there ever contacted him to inform him that the Department had never received a legible copy, or to tell him to try a different method of submitting evidence of his renewal. Moreover, in this era of computerized recordkeeping, it is not at all clear why the Claimant could not have received notice of some sort, whether automatically generated by computer or from someone in NPS when his qualification expired or was removed from his record at the DOT, so that he could submit proof that would maintain his qualification.

At the same time, however, the Carrier has an on-line qualification system, I-Track Force, which employees can access themselves to review and check their qualifications. It is understandable that the Claimant did not check his qualifications at any point before he was displaced, because he was under the impression that his qualification was in the system correctly. But in his statement, the Claimant said that he went onto I-Track Force frequently while he was off work, to see if there were any positions available to him. If it was not in the Carrier's records, the Claimant's CDL qualification would not show up on I-Track Force, and that information was available to the Claimant from the day he was displaced. He could have, and should have, noticed the missing CDL qualification on I-Track Force, especially when he was being told there were so few positions for which he was qualified. If he had noticed the missing qualification, he could have made immediate arrangements to submit the missing verification of his CDL renewal. Once he did that, the positions he subsequently learned about would have been available to him immediately.

In the end, the Carrier's records were wrong – but the Claimant could have resolved the mistake himself almost as soon as he was displaced, had he reviewed his file on I-Track Force and seen that his CDL qualification was missing. Given the joint nature of responsibility for the Claimant's inability to obtain a position for which he was qualified sooner than he did, the Board has no option but to deny the claim.

AWARD

Claim denied.

**Form 1
Page 5**

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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 28th day of October 2015.