

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42240
Docket No. SG-42741
16-3-NRAB-00003-140404**

The Third Division consisted of the regular members and in addition Referee Sidney Moreland when award was rendered.

PARTIES TO DISPUTE: (**(Brotherhood of Railroad Signalmen**
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad:

Claim on behalf of M. R. Brown, for return to his former Signal Maintainer’s position on Gang 5865 with compensation for all time lost, including overtime, as well as the difference in the rate of pay between that of a Signaller and that of a Signal Maintainer for all straight time and overtime hours work[ed] by the holder of his former position, and compensation for any unnecessary mileage he accrued due to his improper removal from said position, account Carrier violated the current Signalmen’s Agreement, particularly Rules 62 and 65, when it disqualified him under its “Unsafe Driver Disqualification Policy” from the Signal Maintainer’s position on Gang 5865 on May 10, 2013, even though he held a valid driver’s license and health card as required by the parties’ Agreement. Carrier’s File No. 1586630. General Chairman’s File No. S-62, 65-1309. BRS File Case No. 15010-UP.”

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.

On July 1, 2012, the Carrier implemented a new "Unsafe Driver Disqualification Policy" (policy) to elevate the safety assurance of its driving employees. The policy, precipitated by 49 C.F.R. 391.25, requires a check of the first-time qualifying driver/employee's driving history for the preceding three years. The policy states, in pertinent part:

"An individual looking to become a first-time qualified driver will need to satisfy moving violation and accident criteria based on the preceding three year MVR history. Those individuals who do not meet the minimum driving standards will not be qualified as a CMV driver for Union Pacific."

The Claimant displaced a Signal Maintainer, a position with a DOT requirement (because the vehicle weighed more than 10,000 pounds) mandating a commercial driver's license (CDL). Accordingly, the Claimant was required to qualify under the Carrier's new policy.

On May 10, 2013, ten days after the Claimant took the position, the Carrier informed the Claimant that he did not qualify to operate a Carrier-owned commercial motor vehicle (CMV) under the new policy due to his examined driving record.

The Organization argues that (1) the Carrier lacked the right to create the new policy (2) the Claimant was not DOT disqualified, and (3) even if the Claimant was disqualified pursuant to the policy, it only required a 120-day suspension from driving the Carrier's commercial vehicle - not a permanent disqualification. The Organization further asserts that the Claimant was compliant with Rule 62, requiring him to secure and maintain a CDL.

Conversely, the Carrier states that (1) the Claimant was not permanently disqualified from a Signalman's position, (2) he lost no compensation and (3) he was still able to hold a Maintainer's position and drive the smaller "Houston" truck. However, because the Claimant had displaced a Signal Maintainer on a position requiring the DOT requirement, he had to become qualified pursuant to the policy

in order to drive the larger “Beaumont” truck. The Carrier also contends that its managerial right to develop and implement reasonable policy for the purposes of managing its workforce and protecting its employees and public, especially when mandated by federal regulation to do so, as in the policy at hand.

The Board must conclude that the Carrier’s new driver policy, mandating driving record parameters, which must be researched, verified, and monitored by the Carrier for positions with the DOT requirement, was precipitated by 49 C.F.R. 391.25. Accordingly, the Carrier was within its managerial rights when enacting and implementing the new policy per federal directive. Accordingly, the claim before the Board 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 29th day of January 2016.