

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42398
Docket No. MW-41948
16-3-NRAB-00003-120270**

The Third Division consisted of the regular members and in addition Referee Steven M. Bierig when award was rendered.

PARTIES TO DISPUTE: (**Brotherhood of Maintenance of Way Employees Division -**
(**IBT Rail Conference**
(**Union Pacific Railroad Company (former Chicago**
(**and North Western Transportation 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 assign Assistant Foreman R. Scheurer to the assistant foreman position on Gang 3342 headquartered at New Prague, Minnesota and instead assigned junior employee T. Lane by bulletin effective March 25, 2011 and continuing until said position was abolished on April 5, 2011 (System File B-1116C-102/1552366 CNW).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant R. Scheurer shall now, ‘*** be compensated for fifty six (56) hours of straight time and one and one-half (1.5) hours of over-time.’”**

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.

Claimant R. Scheurer has established and holds an Assistant Foreman seniority date of April 28, 2006. During the course of his service with the Carrier, Claimant had previously successfully worked as an Assistant Foreman Truck Driver, and he possessed a valid Commercial Driver's License (CDL) with all required Federal and State Department of Transportation (DOT) certifications. However, during the time in question, Claimant was on furlough.

In the instant case, Claimant unsuccessfully bid on the Assistant Foreman Truck Driver position for Gang 3342, which was identified in Bulletin 0785034. Position Qualifications included the requirement that the successful applicant must have completed the course, "HZ72E-Instructions for Handling Hazmat." Claimant's records showed that he had not successfully completed said course, and the successful applicant and junior employee T. Lane had successfully done so. While Claimant was currently assigned as an Assistant Foreman on a different gang, that position did not have the same requirements as the Assistant Foreman Truck Driver position on which he was bidding. The Carrier's denial of Claimant's bid led to the instant Claim.

According to the Organization, although Claimant was senior to the other applicant for Gang 3342 and placed a proper bid on the Assistant Track Foreman position, the Carrier improperly assigned a junior employee to the position in question. The Organization claims that as a result of the Carrier's actions, Claimant lost opportunities for 56 hours of straight time and 1.5 hours of overtime. The Organization submitted a Claim contending that the Carrier had violated the Agreement by not selecting Claimant for the position of Assistant Track Foreman, as he had more seniority than did the other bidder. According to the Organization, Claimant properly placed his bid and although his HZ72E qualification had lapsed, he had been qualified in the past. The Carrier was required to select Claimant for said Assistant Track Foreman position. As a result of the Carrier's actions, the Organization requests compensation for Claimant's lost opportunities.

Conversely, the Carrier takes the position that the Organization cannot meet its burden of proof in this matter. The Carrier contends that while it is uncontested

that Claimant was senior to the other bidders, Claimant was not qualified for the position of Assistant Track Foreman because he did not have HZ72E certification. While Claimant was the senior bidder, he was not the senior qualified bidder and the Carrier had the right to reject him from the Assistant Track Foreman position. The Carrier contends that it acted within its Management Rights in requiring that the position have a HZ72E qualification, and because Claimant did not possess such certification, the Carrier was justified in rejecting Claimant from the instant position.

In the instant case, this Board cannot find that the Organization has been able to meet its burden of proof to show that Claimant should have been placed in the position of Assistant Track Foreman. This Board finds that for the instant position, the Carrier reasonably determined that HZ72E certification was required. "It is well established that in cases of fitness and ability, the Carrier has the management prerogative to judge fitness and ability and the burden shifts to the Organization to demonstrate that the Carrier's decision was arbitrary, capricious or unreasonable." See Third Division Award 36086. See Also Third Division Award 35310. Here, the HZ72E qualification was a reasonable requirement that the Carrier imposed and Claimant did not meet said requirement. The claim is 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 31st day of October 2016.