

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42474
Docket No. MW-42096
16-3-NRAB-00003-130022**

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

**(Brotherhood of Maintenance of Way Employees 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 failed and refused to assign Mr. D. Rojo to the welder helper position advertised by Bulletin DRD50165 (System File UP261WF11/1558890).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant D. Rojo shall now ‘. . . be awarded the Bulletin DRD 50165, on June 10, 2011 and the difference in pay from his current position of Trackman and Welder Helper from June 10, 2011 and continuing. ***’”**

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.

By letter dated August 1, 2011, the Organization presented a continuous claim on behalf of employee Daniel Rojo for not being awarded the bid for a Division Welder Helper position on Gang 3343 in Sanderson, Texas. As a remedy the Organization sought “the difference in pay between Division Trackman and Welder Helper, for all hours worked, starting on June 10, 2011, and continuing” The Bulletin on which Claimant Rojo bid was rebulletined on June 10, 2011, NO QUALIFIED BIDDERS. As the senior nonqualified bidder from the respective division, the Organization contended, the Claimant should have been awarded the position pursuant to Rule 19 of the Agreement.

The Carrier replied by letter dated September 21, 2011, stating that it did not assign Claimant Rojo to the position because he was not CDL Certified. The Carrier enclosed a copy of Claimant Rojo’s DVMS Driver Status Check which in the column headed Certified Date contained the entry 07/26/2011. “Mr. Rojo,” the letter stated, “would have received the seniority if he had complied with the Carriers requirements to become a Certified CDL Driver.” The Carrier denied the claim.

The Organization, by letter dated November 14, 2011, appealed the denial of the claim. It contended that as the senior nonqualified bidder on the bulletin “from the respective division,” the Claimant was entitled to be awarded the position. “The Claimant does not have to be qualified to be awarded the bid,” the Organization asserted. “The Claimant has up to thirty days to qualify.” The Carrier responded by letter dated December 21, 2011. It rejected the Organization’s contention that Claimant should have been allowed 30 days to obtain a CDL, insisting that “CDL is a federally mandated license” and that it “does not assign employees without a CDL to any position requiring it on the bulletin.”

On May 24, 2012, the Organization wrote to the Carrier confirming that a conference had been held between the parties on February 15, 2012. In that letter for the first time the Organization asserted that Claimant “had a Commercial Drivers license on May 27, 2011” and that he “passed all the medical and company tests for the position prior to June 16, 2011.” Therefore, the Organization contended, he should have been awarded the position of Welder Helper. The Organization again wrote to the Carrier on August 24, 2012, reiterating that “the Claimant had a Commercial Driver’s License on May 27, 2011,” and enclosing 12 pages of documentation that had previously been provided to the Carrier.

The Carrier responded by letter dated September 12, 2012. It enclosed a copy of the Notice of MP Bulletin Opening, which gave a Post date of May 27, 2011; an End Post date of June 6, 2011; and an Effective date of June 10, 2011. It listed the Position Qualifications as HZ72E – Instructions for Handling Hazmat and Class B, DOT 5 Ton & Large Vehicles. It then stated that the paperwork enclosed with the Organization's May 27, 2011, letter showed that the Claimant "did not have the necessary physical to obtain his license until June 16, 2011." Therefore, the Carrier concluded, "he clearly did not have his license prior to the close of the bulletin."

The Board has examined the relevant paperwork included in the record. It shows that Claimant did not have his physical examination until June 16, 2011, although the posting of the Bulletin ended on June 6, 2011. A CDL license is not valid until the applicant passes a physical examination. The Claimant therefore did not timely meet one of the requirements of the applicable Bulletin, and the Carrier was justified in denying him the position and re-bulletining the position NO QUALIFIED BIDDERS. See Third Division Awards 40103 and 40961.

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 28th day of November 2016.