

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43049
Docket No. MW-44055
18-3-NRAB-00003-170205**

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference**

PARTIES TO DISPUTE: (

**(Kansas City Southern Railway Company (former
(MidSouth Rail Corporation)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed to properly compensate Mr. T. Taylor for the May 9, 2014 work day and instead required that the day be considered as a personal leave day (System File C 14 05 09/K0414-5075 MSR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant T. Taylor shall ‘... be allowed his personal leave day restored and allowed to utilize at his convenience in accordance with the CBA.’”**

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.

Beginning October 23, 2013, the Carrier commenced advertising the position for Auto Tamper Operator on Gang 261, which had to be reposted as bids were not initially received. The Auto Tamper Operator position was posted several times – October 23, 2013 and November 6, 2013 – with a CDL requirement as part of the posting. See Carrier Exhibit A at 6-8 (“[p]ersons wishing to bid on the Auto Tamper Operator positions, must have a CDL License and present copy of license with bid to be considered for the position.”).

The Claimant was hired on March 3, 2014 as a Track Laborer headquartered at Monroe, Louisiana. On April 23, 2014, the Auto Tamper Operator position on Gang 261 was assigned to the Claimant. At that time, the Claimant did not have a CDL. On May 9, 2014, the Claimant reported for work still without having a CDL. Supervisor P. Ezell instructed the Claimant that in order to remain in the position, he had to obtain a CDL. The Claimant was required to use a personal leave day to obtain the CDL, which prompted this claim.

The Organization points out that while other prior postings for the Auto Tamper Operator on Gang 261 required a CDL, the bulletin that awarded the position to the Claimant dated April 23, 2014 did not specifically state such a requirement. See Carrier Exhibit A at 9-10. At best, technically, the Organization is correct that although prior postings for the position which were not filled had the CDL requirement, the bulletin assigning the position to the Claimant did not.

However, the record is sufficiently clear that notwithstanding what may or may not have been written on the bulletin assigning the Claimant to the position, the prior postings had the CDL requirement and the Claimant was instructed that a CDL was required. Thus, the Board is satisfied that the Claimant knew that a CDL was a minimum requirement for the position.

The Claimant was allowed to work for approximately two weeks without a CDL until the Carrier instructed him that he could no longer do so. If the Claimant desired to remain in the position, he had to get a CDL. In order to allow the Claimant to continue in that position, requiring the Claimant to take a personal day in order for him to obtain a CDL so that the Claimant could meet the minimum requirements for the position was not in violation of the Agreement. The Claimant

obviously had an option and that was if he did not desire to obtain a CDL to not to continue in the position. However, the Claimant chose to stay in the position and therefore had to have the CDL in order to do so. The only way for him to do so was use a benefit day. We can find no violation in this case.

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 2nd day of May 2018.