

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43087
Docket No. MW-43723
18-3-NRAB-00003-160523**

The Third Division consisted of the regular members and in addition Referee Barry E. Simon when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
PARTIES TO DISPUTE: (IBT Rail Conference
(
(CSX Transportation, Inc.**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated on June 10, 2014 when the Carrier advertised a vehicle operator position on Gang 6K40 with the unnecessary requirement of a Class ‘A’ CDL (System File H40410414/2014-174160 CSX).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. Krzan ‘... shall now be compensated for all lost wages that Mr. G. McCumber worked over him (continuing) and an additional \$100.00 per day until the job is abolished and re-bulletined without a CDL requirement per the Carrier’s Driving Policy. Also, that all time be credited towards vacation and retirement. ***’ (Emphasis in original).”**

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 June 10, 2014 the Carrier advertised a vacancy on the Vehicle Operator position on Gang 6K40, headquartered in Riverdale, Illinois. The bulletin advertising the job noted that the successful bidder must hold a Class "A" Commercial Driver's License (CDL). Although he did not have a Class "A" CDL, the Claimant bid on the position, but it was awarded to an employee junior to him, G. McCumber. According to the Carrier, it determined that McCumber was not the proper employee to be awarded the position. It says he was immediately removed from the Vehicle Operator position before he had any earnings on it, and returned to his former Machine Operator position. Apparently, McCumber also lacked a Class "A" CDL.

The gravamen of the Organization's claim is that the Carrier improperly imposed the CDL requirement on the position. It explains that the vehicle assigned to Gang 6K40 is a heavy duty pick-up truck, that does not require even a Class "B" CDL, let alone at Class "A" license. The Carrier has responded that the truck is a stake body with a trailer hitch and may be used to pull a trailer at times.

Absent contractual language restricting the Carrier's right to determine the qualifications and requirements for a position, we hold that the Carrier has discretion to do so. Several Awards cited by the Organization reach the same conclusion. For instance, Public Law Board No. 4768, in Award No. 70, held, "There can be no question that the Carrier must meet DOT requirements as to vehicle operation. In addition, the Carrier clearly retains the authority to determine position qualifications in reasonable fashion." Similarly, Special Board of Adjustment No. 956, in Award No. 16, held, "While Carrier has considerable latitude in determining 'fitness and ability,' it is not at liberty to prescribe qualifications that are discriminatory and not relevant to the position." We do not find evidence in the record before us that the requirement for the CDL was imposed either to tailor the job to a specific employee, or to eliminate another employee's right to bid on it. Nor is there a sufficient basis in the record to conclude the truck would not be used to pull a trailer, thereby requiring the CDL. Consequently, we cannot find the Carrier's decision to bulletin the job with this requirement to be an unreasonable exercise of its discretion. The Agreement was not violated.

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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.