

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43809  
Docket No. MW-45007  
19-3-NRAB-00003-180278**

**The Third Division consisted of the regular members and in addition Referee George Edward Larney when award was rendered.**

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

**PARTIES TO DISPUTE: (**

**(The Belt Railway Company of Chicago**

**STATEMENT OF CLAIM:**

**“Claim on behalf of the System Committee of the Brotherhood that:**

- 1) The Agreement was violated when the Carrier failed to assign senior employe H. Jones to the position of truck driver (TF03) headquartered at the Maintenance of Way Shop, Clearing Yard beginning on July 27, 2016 (System File RI-1607B-8m01 BRC).**
- 2) As a consequence of the violation referred to in Part (1) above, Claimant H. Jones shall now \* \* \* be compensated for, all hours of lost wages, wage differential if working in a lower class position while a junior employee is allowed to be assigned to the higher class position, all overtime of the assigned position, and should be placed on Truck Driver (TF03) seniority roster and with a seniority date of 07/27/16 Rank 1. ”**

**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 15, 2016, Carrier's Maintenance of Way Department posted Notice No. TD 16-23 advertising an opening for a full-time Truck Driver position. Among the information specified on the bulletin such as location, pay rate, rest days, was the following brief description of duties of the position:

**"Operate motor vehicles used in transportation of men and equipment to job sites and perform other work incidental to the operation of a railroad that is usually assigned to and performed by track forces. Must have knowledge of applicable GCOR, BRC Timetable and Special Instructions and must be required to pass an examination on same. Must be able to read, speak, and write the English language and be able to converse sufficiently in English to carry out duties of this position. Must obtain required CDL license to operate motor vehicle per BRC Policy (emphasis the Referee)."**

Said bulletin was posted pursuant to the provisions of Rule 14-Filling Positions By Bulletin of the September 1, 2002 controlling Collective Bargaining Agreement which, in pertinent part provides the following: "that the notice be posted for a period of ten (10) days at the headquarters of the gang in the sub-department of employees entitled to consideration in filling the position, during which time employees may file their application with the official whose name appears on the bulletin [here, David S. Cargill, Manager of Engineering]; appointments will be made within fifteen (15) days from the date the bulletin is posted; and employees bidding . . . will be advised [of the] name of employees assigned and the names of other applicants".

Carrier received bids for this position by two (2) employees, the Claimant herein, Hubert Jones who entered the service of the Carrier as a Trackman on December 3, 2012, and employee, A. Vazquez who entered service of the Carrier as a Trackman on August 3, 2015. Given their respective dates of entry into Carrier's service in the identical job classification, there is no dispute that the Claimant possessed greater seniority than that of employee Vazquez. Yet, by notice dated July 26, 2016, Carrier

awarded the advertised full-time Truck Driver position beginning July 27, 2016, to the less senior employee Vazquez over the Claimant.

The Organization asserts that by awarding the Truck Driver position to the less senior employee, Carrier violated several rules of the 2002 controlling Collective Bargaining Agreement, but primarily Rule 10 which reads in whole as follows:

**“Rule 10 – Basis of Promotion**

*Promotion shall be based on ability and seniority, ability being sufficient, seniority shall prevail, management to be the judge (*emphasis the Referee*).*

**In assigning employees to fill vacancies or new positions, the provision of the rule will apply.”**

The Organization maintains that the Claimant not only possessed seniority over Vazquez but he also demonstrated sufficient ability to perform the duties of the Truck Driver position noting that there were several occasions Carrier temporarily designated the Claimant’s occupation as Truck Driver on its Department Time Sheets as opposed to his permanent position of Trackman. These temporary designations occurred on June 24, 2016; July 21, 2016, and again on July 22, 2016, the very day the Claimant submitted his bid for the position of Truck Driver as advertised in Bulletin TD 16-23.

Carrier agrees that Vazquez possesses less seniority than the Claimant but explained it awarded the Truck Driver position to him over the Claimant on grounds that the Claimant lacked the factor of ability as set forth in Rule 10 at the time the position was posted of not possessing a Commercial Driver’s License (CDL) which was required and stated on the Bulletin in the section titled Description of Duties; specifically, *“Must obtain required CDL license to operate motor vehicle per BRC Policy”* whereas, employee Vazquez at the time he bid on the position already possessed the required CDL. Carrier’s reference to its Commercial Driver’s License Policy revised as of February 23, 2016, reads in pertinent part as follows:

**“Effective February 22, 2016, those employees assigned to operate a company vehicle and/or equipment that require a Commercial Driver’s License (CDL) must be in compliance with the Commercial Motor Vehicle Safety Act of 1986.**

\* \* \* \*

The BRC requires the following of employees seeking a CDL:

1. All written portions of the CDL exam must be passed no later than forty-five (45) days after the employee is awarded a position requiring a CDL. Employees will be given a maximum of three (3) chances to pass the written portion within this forty-five (45) day time limit.
2. An appointment to take the initial road skill CDL exam must be made no later than fifteen (15) days after successful completion of the written CDL exam. Employees will be given a maximum of three (3) chances to pass the road skill CDL exam. Employees must make appointments for road skill CDL exams no later than fifteen (15) days from the date of each failure notice.”

Employees failing to qualify for a CDL, after being awarded a position requiring same, must return to their former position.

It is more than abundantly clear to the Board from a straightforward reading of the July 15, 2016, Bulletin TD 16-23 in conjunction with the pertinent provisions of Carrier’s CDL policy cited above, that Carrier violated the relevant terms of the Bulletin, its CDL policy as well as Rule 10 of the controlling Collective Bargaining Agreement when it failed to award the Claimant the bulletined position of Truck Driver over promoting the less senior employee Vazquez to the position based solely on the fact that he already possessed a CDL at the time he submitted his bid for the position. In examining the key phrase in the description of duties of the position as set forth by Bulletin 16-23, to wit: “Must obtain required CDL license to operate motor vehicle per BRC Policy”, it is evident to the Board that Carrier has misconstrued this requirement to mean a successful bidder for the Truck Driver position must already be in possession of a CDL at the time of bidding for the position. If such was actually required of bidders, the Bulletin would have explicitly stated it was a pre-requisite to already be in possession of a CDL in order to bid for the bulletined position. However, this was not the case and cannot be construed to be the case based on the language cited from the Bulletin especially when Carrier’s CDL policy is subjected to close scrutiny which unambiguously purports and show’s Carrier’s intent to facilitate the requirement of a successful bidder for a CDL position to obtain a CDL license.

Additionally, the Board is convinced Carrier in this case has confused possession of a credential, a CDL license as being synonymous with an aspect of ability as that term is set forth in Rule 10 of the controlling Collective Bargaining Agreement. Equating a credential with an aspect of ability runs counter to all interpretations of ability as that term is used in the typical contractual clause governing promotions as an offset to the factor of seniority. As generally construed, ability pertains to possession of a skill set necessary to perform the job duties of the position sought by an employee or prior experience of the bidder for the posted job of having actually performed the duties of the position being sought or both. In the instant case, the evidence demonstrated that in having previously performed the duties of the Truck Driver position on more than one occasion, the Claimant demonstrated he possessed the skill, that is, the ability to successfully perform the required duties of the position and that having so demonstrated, under Carrier's own CDL policy, Carrier was obligated to award the position to the Claimant and to then facilitate the Claimant's obtaining a CDL license.

Based on the foregoing findings, we rule to sustain the instant claim in its entirety and defer to the Parties to negotiate a remedy that meets the requirement for making the Claimant whole for all losses actually incurred over the relevant period in question.

### AWARD

Claim sustained.

### ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Dated at Chicago, Illinois, this 16th day of July 2019.