

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43908
Docket No. MW-45068
20-3-NRAB-00003-180569**

The Third Division consisted of the regular members and in addition Referee Kathryn A. VanDagens when award was rendered.

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

PARTIES TO DISPUTE: (

**(National Railroad Passenger Corporation (AMTRAK)
(- Northeast Corridor**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed to allow Mr. P. Cosgrove to exercise his seniority and displace a junior employee on Gang A504 on February 24 and 27, 2017 (System File NEC-BMWE-SD-5530 AMT).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant P. Cosgrove shall now be compensated for sixteen (16) hours at his applicable straight time rate of pay.”**

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.

The Claimant has established and maintains seniority within the Maintenance of Way and Structures Department. On Friday, February 24, 2017, the Claimant attempted to make a bump/seniority displacement onto the Matweld machine operator position on Gang A504 in Wilmington, Delaware. Supervisor Field informed the Claimant that he had to be qualified on the Matweld machine in order to bump into that position. The Claimant maintained he was qualified and requested that he be allowed to demonstrate his qualifications.

The Claimant was similarly not allowed to bump on Monday, February 27, 2017, but on Tuesday, February 28, 2017, the Claimant demonstrated his qualification to operate the Matweld machine and was immediately allowed to make his bump.

The Organization filed this claim on April 7, 2017, alleging a violation of Rule 2 and seeking 16 hours of compensation at straight time for Friday, February 24, 2017 and Monday, February 27, 2017, when the Claimant was prevented from bumping. The Carrier denied the claim on June 5, 2017. The parties were unable to resolve the claim on-property, so it is now properly before this Board for final adjudication.

Rule 2, "Qualifications For Positions", provides in part:

- “(a) In making application for an advertised position or vacancy, or in the exercise of seniority, an employee will be permitted, on request, or may be required, to give a reasonable practical demonstration of his qualification to perform the duties of the position.
- (b) In the event the employee requests, or is required, to give a reasonable and practical demonstration of his qualifications for a position, the Company must give uniform job related tests based on reasonable job related criteria in order to ascertain initial qualifications for positions. The General Chairman or his designated representative shall have the right to inspect the tests and/or criteria and results of such tests to determine that the application of such tests and/or criteria are uniform to all employees.”

The Organization contends that the Carrier violated the Agreement when it failed to allow the Claimant to exercise his seniority and bump the operator position based on a lack of qualifications and refused to allow him to demonstrate his qualifications on February 24 and 27, 2017. The Organization contends that the Carrier

wrongly asserted that the Claimant did not have the qualifications for the position, as when he was allowed to demonstrate his qualifications, he was ultimately found to be qualified.

The Organization contends that the Consent Decree must be read in conjunction with Rule 2 and that Rule 2 does not require a written request be made to demonstrate qualifications. The Organization contends that the Consent Decree does not invalidate any Rule 2 protections. As a result, the Organization contends that the Claimant is entitled to be compensated for sixteen hours at his straight-time rate for the period that the Carrier improperly prevented the Claimant from filling the position.

The Carrier contends that after the Claimant was displaced from his position as a Trackman, he attempted to make a seniority move into Gang A504 on Friday, February 24, 2017 and again on February 27, 2017. However, the Carrier contends that the Claimant did not possess the qualifications to make the move and the Carrier was not required to make an accommodation to allow the Claimant to immediately demonstrate his qualifications for the days in question.

The Carrier contends that Rule 2 does not require it to permit an immediate demonstration of qualifications. The Carrier contends that the Consent Decree provides that if a written request is made, the Carrier must fulfil that request within fifteen working days of the written request. The Carrier contends that although it had no responsibility to administer the test three days after the Claimant's verbal request, doing so was reasonable. The Carrier contends that the Organization has failed to show a violation of the Agreement, or that the Claimant is entitled to a remedy.

Under Rule 2, the Carrier may permit or require an employee to give a reasonable practical demonstration of his qualification to perform the duties of the position before exercising the employee's displacement rights. As the Carrier points out, Rule 2 does not contain a time limitation, but as with any exercise of a contractual right or obligation, it must be undertaken reasonably.

Here, the Claimant requested to give a reasonable practical demonstration of his qualification to perform the duties of the position but was not immediately given the opportunity. The Carrier provided the opportunity within a few days and the Claimant demonstrated his qualifications to perform the duties. He was then permitted to exercise his displacement rights.

The Organization has not shown that the Carrier unreasonably exercised its right to require a practical demonstration of the Claimant's qualifications. Although the Claimant was not provided an immediate opportunity, providing an opportunity to him within a few days was not unreasonable under the circumstances of 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 28th day of January 2020.