

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44071  
Docket No. MW-43495  
20-3-NRAB-00003-190597**

**The Third Division consisted of the regular members and in addition Referee Paul S. Betts when award was rendered.**

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

**PARTIES TO DISPUTE: (**

**(Union Pacific Railroad Company (Former Missouri Pacific)**

**STATEMENT OF CLAIM:**

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

- (1) The Agreement was violated when the Carrier failed to assign senior Assistant Track Foreman J. Yazzie, Jr. to the position of assistant foreman on Gang 2832 and instead assigned junior employee J. Haycook (System File UP970PA15/1620996 MPR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. Yazzie, Jr. shall be compensated “\*\*\* for all overtime in which this junior employee works until Claimant is reassigned to this position. \*\*\*” ”**

**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.**

In the instant dispute, the Organization alleges the Carrier violated the Agreement when it failed to assign the Claimant to the position of Assistant Foreman on Gang 2832 and instead assigned the position to a junior employee.

On December 5, 2014, the Carrier posted the bulletin for the position, which identified that the position required a "Class B, DOT 5 Ton & Large Vehicles" qualification. The Claimant bid on the position, but the position was awarded to a junior employee. There is no dispute the Claimant was senior to the employee awarded the position, but the Carrier contends the Claimant was not qualified and did not possess the required qualifications for the assignment.

In summary, the Organization argues a) the Claimant was the senior qualified employee for the assignment, b) the Claimant possessed all required qualifications for the position, c) the only reason the Carrier's database listed the Claimant as unqualified was because the Carrier was dilatory in updating its records, and d) it is unrefuted that the Organization contacted the Carrier's DOT Department and confirmed with them that they had all the required documentation necessary from the Claimant for the position.

In summary, the Carrier argues a) the Claimant was decertified as a CDL driver on 11/12/14 and did not possess the requisite qualifications for the position, b) while the Organization provided a copy of the Claimant's October 10, 2014 "Medical Examiner's Certificate" medical card, it did not provide any evidence to show that it had been turned in, or that the Carrier's actions had created the disqualification, c) the Organization failed to supply any probative evidence indicating that the Medical department failed to update the Claimant's information thereby creating the not qualified situation, d) even if the health card had been turned in, the Claimant still would not have been qualified because he fell off the FMCSA drug pool, e) regarding remedy, on January 2, 2015, the Claimant bid to and was awarded a position on Workgroup No. 7822 as a "Restricted Crawler Hoe Excavator." Any remedy liability would have ended at this point, and f) the junior employee awarded the position worked no overtime during the claim period; worked less overall hours than the Claimant; and earned less per hour than the Claimant. As a result, the Claimant suffered no loss.

During the correspondence between the parties regarding the instant claim, the Organization advised the Carrier that they had contacted the DOT Department in Omaha regarding the Claimant's status. The DOT Department indicated they had all the required information for the Claimant (not just the medical card) and that the Medical department failed to update the system. In other words, the only reason the Carrier's database listed the Claimant as unqualified was because the Carrier's Medical department failed to update

its system. This point was never refuted by the Carrier on property. As a result, the Board finds the Carrier violated the Agreement when it failed to award the position to the Claimant.

As to the remedy, the Statement of Claim is absent a claim for the bulletined Assistant Foreman position, and is only seeking the overtime per paragraph 2 of the Statement of Claim. The record indicates the employee who was awarded the position did not work any overtime during the claim period, worked less overall hours than the Claimant, and earned less per hour than the Claimant. As a result, the Board finds the Claimant suffered no loss and is not entitled to any monetary award.

Based upon the above, the Board sustains the claim as it relates to paragraph 1 of the Statement of Claim but denies the claim as it relates to paragraph 2.

Although the Board may not have repeated every item of documentary evidence, nor all the arguments presented, we have considered all the relevant evidence and arguments presented in rendering this Award.

**AWARD**

Claim sustained in accordance with the Findings.

**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 11<sup>th</sup> day of August 2020.