

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44105
Docket No. MW-43016
20-3-NRAB-00003-190358**

The Third Division consisted of the regular members and in addition Referee Jeanne Charles when award was rendered.

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

PARTIES TO DISPUTE: (

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

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed and refused to properly bulletin the position of Utility Tractor Operator (backhoe) Class 18 on Gang 8432 and when it improperly issued a bulletin for that position with a requirement for the operator to have a commercial driver’s license (Class B) and Department of Transportation certification and when it assigned junior employee D. Aubrey thereto instead of Mr. R. Yoder who was senior and qualified (System File D-1410S-301/1598198 SPW).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant R. Yoder shall “*** be compensated as if he was assigned to bulletin WTL51203 effective December 13, 2013. That is, Claimant shall be compensated for all hours, both straight time and overtime at the respective rate of pay for each work and or rest day subsequent to the effective date of the cited bulletin. Further, because Claimant Yoder remained in furlough status he shall also be treated as an active employee with full benefits of retirement credit, health and welfare benefits, vacation credit and all other benefits associated with the collectively bargained agreement. Further, the Carrier shall abolish the current position under bulletin WTL51203 and properly advertise it without the CDL licensing previously demanded. This is compensation and**

benefit the Claimant was and is entitled to absent the violation of our Collective Bargaining Agreement. This claim is considered continuing until the current position abolished and is properly bulletined absent CDL requirements.’”

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.

Claimant R. Yoder established and maintained seniority in the Carrier's Maintenance of Way and Structures Department, including a Utility Tractor Operator seniority date of April 2, 1990. During December 2013, he was furloughed and not regularly assigned to a position. Claimant did not possess a Class B Commercial Driver's License (CDL).

In early December 2013, the Carrier posted Bulletin WTL 51203 for a Utility Tractor Class 18 position on Gang 8432 headquartered at Beaumont, California. Both Claimant and D. Aubrey, who is junior to Claimant, placed bids for the position. D. Aubrey was awarded the bid when the assignment closed on December 13, 2013. Claimant was not assigned the position because he did not have a Class B CDL.

The Organization filed claim under letter dated January 8, 2014 alleging that Claimant's bid was unjustly ignored because a Class B CDL is not required for the position. The Carrier denied such by letter dated February 4, 2014, on the basis that the collective bargain agreement (Agreement) did not restrict management from bulletining the position with the CDL requirement. The dispute progressed in the normal fashion, with a claims conference on August 21, 2014. The claim was properly handled by the Organization at all stages of the appeal up to and including the Carrier's

highest appellate officer. The matter was not resolved and is now before this Board for resolution.

In reaching its decision, the Board has considered the record evidence and arguments of the parties, whether specifically addressed herein or not. As the moving party, it was the Organization's responsibility to meet its burden to prove by a preponderance of evidence that the Carrier committed the alleged violation(s). After careful review of the record, the Board finds the Organization has not met its burden.

This Board is faced with the question of whether the Carrier has the right to ensure that its employees possess the necessary qualifications for a position. Additionally, the Organization's claim raises the question of whether the Carrier is limited in the equipment it can place on a particular workgroup. It is the Board's finding that the Carrier does possess the managerial right to make determinations of employee's fitness, ability, and qualifications for a position including whether a CDL is required. Third Division Award No. 37846 (Neutral Robert M. O'Brien) held that "It is well settled that unless restricted by a specific Rule or Agreement, it is the manager's prerogative to establish qualification of advertised positions."

The Carrier's requirement for a commercial driver's license to operate a commercial vehicle was not unreasonable. After a careful review of the record, the Board does not find any evidence of a specific rule or Agreement provision that restricts the Carrier's ability to list the Class B qualification requirement. To be clear, the Carrier was compelled to list the qualification on the bulletin per DOT federal regulations. Failure to do so would have been contrary to the regulations and created liability for the Carrier. The vehicle was greater than 10,000 pounds. This weight required a Class B qualification. Claimant did not possess a CDL. The Carrier did not violate the Agreement when it did not award the bid to Claimant.

AWARD

Claim denied.

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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 11th day of August 2020.