

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44354
Docket No. MW-45707
21-3-NRAB-00003-200011**

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) –
(Other than Northeast Corridor**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned junior employe N. Russler to perform track work (installing bolts) at Wayne Diamonds on May 24, 2018 instead of offering and assigning senior employe J. Brewer thereto (Carrier’s File BMWE-629 NRP).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. Brewer shall be compensated four and one-half (4.5) hours at his applicable overtime 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 in the Carrier's Maintenance of Way Department and holds a trackman seniority date of February 4, 2013. During the time period involved, the Claimant held the position of Machine Operator "B+" and was assigned to work at Jackson, Michigan.

On May 24, 2018, the Carrier utilized junior employee N. Russler to perform trackman work of replacing bolts on the Wayne Diamonds instead of calling and assigning the Claimant. Employee Russler worked a total of four and one-half (4.5) hours at the overtime rate of pay on the disputed date. There is no dispute that the Claimant was senior to employee Russler. Similarly, it is undisputed that Russler held a Commercial Driver's License ("CDL") endorsement and the Claimant did not.

By letter dated July 16, 2018, the Organization filed a claim on behalf of the Claimant asserting that the Agreement was violated when the Carrier failed to properly assign the Claimant and instead assigned a junior employee to the overtime opportunity. The Carrier denied the claim by letter dated July 27, 2018. The parties were unable to resolve the claim on-property, so it is now properly before this Board for final adjudication.

The Organization contends that the Carrier violated Rule 11 of the parties' Agreement when it assigned junior employee Russler to perform overtime service replacing bolts at the Wayne Diamonds in lieu of the Claimant, who is more senior. Rule 11.4 states:

- “(a) Preference to overtime work on a regular day which precedes or follows and is continuous with a regular assignment shall be to the senior available qualified employee of the gang or the employee assigned that work.
- (b) Preference to overtime work other than in (a) above, shall be to the senior available qualified employee at the headquarters who ordinarily and customarily performs such work.”

The Organization contends that the Claimant was ready, willing and qualified to perform the claimed work. Although the Claimant did not possess the CDL, the endorsement is only required to drive, not operate, the vehicle. The Organization

further contends that the Carrier did not provide any evidence that employee Russler drove the vehicle.

The Carrier does not deny that the Claimant was more senior but contends that the Claimant was not qualified to perform the work. The Carrier contends that the only safe practice to tighten these bolts required the use of a hydraulic system on a Commercial Motor Vehicle ("CMV") and that the Claimant did not possess the CDL required to operate the CMV. The Carrier contends that employee Russler was the only qualified employee available to perform the work, as he holds the CDL.

The Organization bears the burden of showing that the Carrier has violated the parties' Agreement. Here, there is no question that the work took place as alleged and that the Claimant was senior to the assigned employee. However, the Carrier has asserted that the Claimant was not qualified to perform the work, as he did not hold the CDL endorsement necessary to operate the hydraulic system on the CMV.

This Board has often recognized that it is the right and responsibility of the Carrier to determine an employee's qualifications to perform work. Unless those qualifications have been found to be arbitrary or unreasonable, this Board will not disturb them. Here, the Carrier determined that the safe practice to tighten the bolts required use of the hydraulics on the CMV. A CDL was required to operate the CMV, regardless of who was driving it. Under the facts of this case, the Carrier's determination that the Claimant was not qualified to perform the work was neither arbitrary nor unreasonable.

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 6th day of January 2021.