

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 44802  
Docket No. SG-46267  
23-3-NRAB-00003-200986

The Third Division consisted of the regular members and in addition Referee Barry E. Simon when award was rendered.

**PARTIES TO DISPUTE:** (Brotherhood of Railroad Signalmen  
(Montana Rail Link, Inc

**STATEMENT OF CLAIM:**

“Claim on behalf of G.E. Rasmussen, for reinstatement to his former position with compensation for the difference in pay between A-rate and Special B-rate, along with any lost overtime commencing on September 25, 2019, continuing until he is reinstated to his former position; account Carrier violated the current Signalmen’s Agreement, particularly Article III-E, when it failed to award the position to the senior applicant on Signal Bulletin No. 19.16. Carrier's File No. 19-101-MRL-87. General Chairman's File No. 19-101-MRL-87. BRS File Case No. 16318-MRL. NMB Code No. 117.”

**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 Carrier was notified by its automobile liability carrier in June 2018 that the Claimant was excluded from coverage due to his driving record. Because driving a

company vehicle is an essential part of a signal maintainer's duties, the Carrier ultimately disqualified the Claimant from his position. That disqualification was addressed by this Board in Third Division Award 44326 (Ref. Clauss), holding:

The record also establishes Claimant's driving history. The record also establishes that the Carrier's insurance carrier would not insure Claimant when operating a company vehicle. Although he had a valid driver's license and the other qualifications of the position, the Carrier cannot allow him to drive a company vehicle.

If the Carrier were to defy the insurance carrier, Claimant would be operating a company vehicle as an uninsured motorist and thereby risking significant liability. Clearly, there is nothing in the Agreement, or any reasonable interpretation of the Agreement, that would support placing an employee into a position where there was an uninsured driver.

That Award continued with the finding that "Claimant retained his seniority and was therefore able to bid to a position that did not require him to operate a company vehicle that required a driver's license."

The instant case involves the Carrier's refusal to award the Claimant a different signal maintainer position on which he was the senior bidder. In awarding the position to an employee with less seniority, the Carrier argues the Claimant was not qualified for the position. The Organization disputes the Carrier's contention, arguing that the only requirement is that the Claimant have a valid driver's license. It asserts that the Claimant is properly licensed. It also denies that the Claimant is uninsurable, and contends he has his own auto insurance coverage. The Organization cites Article X of the Agreement, reading in pertinent part as follows:

**"B. Signal Department employees operating Company vehicles will be required to have a valid driver's license."**

The conclusion reached in Award No. 44326 is equally applicable to this case. Article X does not contain all of the requirements for qualification to be a signal maintainer. In Award No. 44326, the Board recognized that insurability by the Carrier's vehicle insurance carrier was also required as a condition of being able to operate a company vehicle. The Claimant still did not meet that qualification when he bid on the position in question. Consequently, as the Board held in Award No. 44326,

we must find that the Claimant was not qualified for the position and the Agreement was not violated when the Carrier awarded the position to a junior qualified employee. The Board has been advised that the insurer lifted its bar on August 14, 2020, and the Claimant was able to place himself on a maintainer position on October 29, 2020.

Apart from the merits in this case, the Organization has argued the Carrier failed to respond to its initial claim in a timely manner. It says its claim was filed on September 17, 2019, but not denied until November 26, 2019. This, says the Organization, was ten days beyond the sixty-day time limit. We find that Decision No. 16 of the National Disputes Committee provides the remedy for the Carrier's late denial of the claim. In accordance with that decision, we will grant the remedy requested by the Organization for the time commencing with the effective date of the award of the position to the junior employee through November 26, 2019. The balance of the claim is denied.

**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 28<sup>th</sup> day of October 2022.