

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 45071  
Docket No. MW-46810  
24-3-NRAB-00003-210747**

The Third Division consisted of the regular members and in addition Referee Patricia T. Bittel when award was rendered.

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

**PARTIES TO DISPUTE: (**  
**(Keolis Commuter Services**

**STATEMENT OF CLAIM:**

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

**(1) The Agreement was violated when the Carrier failed to award a Bridge and Building (B&B) foreman position headquartered in Wilmington, Massachusetts to senior employee Mr. P. Widegren, II and instead awarded the position to junior employee N. Harty on June 26, 2020 (System File S-2008K082/BMWE 27/2020 KLS).**

**(2) As a consequence of the violation referred to in Part (1) above, Claimant P. Widegren, II shall have his seniority properly dated for the B&B Foreman Advertisement Number B&B 673, be listed on the seniority roster ahead of junior employee Nick Harty and be fully compensated for any missed compensation for the B&B foreman 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.

**Factual Background:**

Claimant Widegren submitted a bid for a B&B foreman position headquartered in Wilmington, Massachusetts. On June 24, 2020, the Carrier posted the awards for the position, and awarded it to Claimant. The Carrier amended the awards on June 26, 2020, and awarded the position to N. Harty. Insofar as Hardy is the less senior employee, Claimant protested the award; his claim has been processed to consideration by this Board.

The applicable provision of the parties' Agreement is Rule 8, which states as follows in pertinent part:

**Rule 8 - BULLETIN, ASSIGNMENT AND DISPLACEMENT**

1. New positions or vacancies (except short vacancies of thirty (30) days or less) will be on bulletin boards on Wednesday. The bulletin shall include whether or not the position is permanent or temporary and the position title (including the type of equipment primarily operated, where applicable), rate of pay, headquarters, work week, rest days, tour of duty and assigned territory. Employees desiring bulletined positions must file written application with the Carrier official signatory to the bulletin within seven (7) days after the bulletin is posted and positions will be awarded to the senior qualified applicant effective not later than fourteen (14) days after the bulletin is closed. This rule shall not be construed so as to require the placing of employees on their awarded positions when properly qualified employees are not available at the time to fill their places, but physical transfers must be made within ten (10) days after effective date of award. Short vacancies of thirty (30) days or less may be filled by any available qualified employee covered by this Agreement. However, if the employee assigned to a short vacancy under this paragraph is other than the senior employee, he may be displaced by a senior employee on written notice to the supervisory official, provided written notice is made within five (5) days after the position is first filled, or in accordance with paragraphs 3, 4, and 5 of this rule. \* \*

\*

2. An employee, after being awarded a bulletined position or permitted to exercise displacement rights, will be allowed thirty (30) calendar days in which to demonstrate his ability to competently perform the job. An employee who fails to qualify within thirty (30) calendar days may return to his former position without loss of seniority, but will acquire no seniority dating on the position for which he failed to qualify if such position is in a higher classification.

**Position of Organization:**

The Agreement clearly states that positions will be awarded to the senior qualified applicant. Furthermore, Part 2 of Rule 8 states that “An employee, after being awarded a bulletin position or permitted to exercise displacement rights, will be allowed thirty (30) calendar days in which to demonstrate his ability to competently perform the job.” Rule 5, Section 4 of the Agreement provides that assignment to positions covered by the Agreement will be based on qualifications and seniority; qualifications being sufficient, seniority will govern. Accordingly, employees with seniority in the class of a position to be assigned are entitled to the assignment. The Organization concludes that as the senior applicant, Claimant should have been awarded the position.

As the Organization sees it, Claimant should have been allowed thirty (30) days to obtain the DOT card. Significantly, Claimant obtained the required DOT card on June 26, 2020, the same day the Carrier amended the awards. Numerous decisions of this Board have upheld an employees’ right to qualify for a position. In this connection, The Organization references Third Division Awards 5348, 8197, 14592, 14762, 22357 and 22782. Typical decisions include Third Divisions Awards 5348, 14762 and 22357 which held:

Fitness and ability as indicated in Award 2427 cited with approval in Award 3273 does not mean that the applicant is immediately qualified to step in and assume the duties of the position without guidance or assistance. It means that the applicant must have such training, experience and character as to raise a reasonable probability that he would be able to perform all the duties of the position within a reasonable time. (Award 5348)

**Position of Carrier:**

At the time of the bid, Claimant did not have the requisite DOT card. The Carrier therefore determined that Claimant was unqualified for the position and awarded the position to another employee who was qualified.

The Carrier argues this is not a circumstance where an employee can gain qualification “on the job.” Massachusetts law requires that all operators of vehicles over 10,000 pounds have the appropriate DOT card illustrating medical clearance. Claimant did not meet that minimum standard and the Carrier could not violate the law and risk his and other’s safety by allowing an unqualified person to bid into that role.

In analyzing who determines qualifications as required by the contract, Arbitrator Meyers and the Board have stated “[i]t is fundamental that the Carrier has the right to set the job skill requirements when it assigns work to employees. The carrier has the right to determine who is qualified to perform the job.”

**Analysis:**

The Carrier is persuasive in its argument that it has the discretion to determine what qualifications are necessary in order to bid into a position. In view of the legal requirement that operators of vehicles over 10,000 pounds have the appropriate DOT card, the establishment of DOT as a prerequisite to bidding on the position at issue was properly within managerial discretion. As such the 30-day trial period is irrelevant.

**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 31<sup>st</sup> day of October 2023.