

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45354
Docket No. MW-47709
25-3-NRAB-00003-220640**

The Third Division consisted of the regular members and in addition Referee Barbara C. Deinhardt when award was rendered.

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

PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation (AMTRAK)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when, beginning on September 14, 2020, it failed to award Trackman T. Deptol (‘Claimant’) the M/W Repairman position headquartered on Gang Y-252c per Advertisement 071-UND-0820 and instead assigned junior employee L. Skinner thereto (System File BMW-159464-TC AMT).

(2) As a consequence of the violation referred to in Part (1) above:

‘The Organization will require the Carrier to issue a correction of award and place Claimant into the M/W Repairman position in gang Y-252c for which advertisement 071-UND-0820 was for. In addition to this correction of award Claimant must be compensated for the difference in pay from trackman to M/W repairman from September 14, 2020 to the time the Carrier issues a correction of award for advertisement 071-UND-0820.

This claim is herein presented, as defined in Rule 64(e) on a “continuing” basis.’

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 Organization argues that beginning on September 14, 2020 and continuing, the Carrier awarded advertisement of 071-UND-0820 (M/W Repairman) to employee L. Skinner instead of to the Claimant. The Claimant is fully qualified for the position of M/W Repairman and is senior to Skinner and therefore should have been awarded the assignment. The Claimant possessed the CMV Physical Qualification at the time the advertised position was listed but the Carrier's records were not up to date.

According to the Carrier, the Organization has not met its burden of proving that the Carrier violated the Agreement. The Carrier contends the repairman position required a CMV Physical Qualification for which the Medical Department's database showed the Claimant was not up to date, thus denied the Claimant the assignment. On August 24, 2020, the Carrier advertised the position of M/W Repairman under advertisement number 071-UND-0820. The necessary qualifications were listed on the advertisement and included "CMV1 Physical Qualification Required." The advertisement period closed on August 31, 2020. The Claimant T. Deptol bid on the advertisement. However, he was not considered a qualified bidder because his DOT medical card showed as expired in the Carrier's system. The position was awarded instead to L. Skinner who is junior to the Claimant but was the senior bidder with the proper qualifications. *After* the Claimant was not awarded the position, he provided his updated DOT medical card to the Carrier. The Carrier denied the claim because of Claimant's lack of qualification.

Upon a review of the record as a whole, the Board finds that the Organization has met its burden of proof. The Claimant passed his DOT physical exam on July 17, 2019. The Amtrak-contracted clinic that performed the test notified Amtrak that same day that the Claimant had passed. In addition, the Claimant gave a copy of his medical card to his supervisor. Given that he had taken steps to update the Carrier as to his qualifications, we find that under the particular circumstances here, the claim should be sustained.

AWARD

Claim sustained.

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 31st day of October 2024.