

AWARD NO. 82

Case No. 82

Organization File No. A02849909

Carrier File No. 2009-044152

PUBLIC LAW BOARD NO. 7163

PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION,
) INTERNATIONAL BROTHERHOOD OF TEAMSTERS
TO)
)
DISPUTE) CSX TRANSPORTATION, INC.

STATEMENT OF CLAIM:

1. The Agreement was violated when the Carrier failed and refused to allow Mr. R. Schardt to displace junior employee G. Wheeler on February 16, 2009 and continuing.
2. As a consequence of the violation referred to in Part 1 above, Claimant R. Schardt shall now ' . . . receive (1) day's pay at the Vehicle Operator hourly rate of pay of \$22.65, which amounts to \$181.20 per day, beginning February 16, 2009 and continuing until this violation stops.'

FINDINGS:

The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated March 20, 2008, this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

On February 12, 2009 Claimant informed Supervisor M. McGowan that he wished to exercise his seniority to displace a junior employee as a vehicle operator for a fuel truck on Force 5DCT. Claimant was denied this displacement because he did not possess a Class "A" Commercial Driver's License (CDL). It is undisputed that Claimant held a Class "B" CDL with a Hazmat

endorsement, and had worked the same position for two years between 2006 and 2008, when the position was abolished.

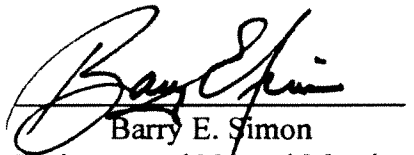
The Carrier argues it has a right to determine the qualifications for positions, and that employees displacing onto positions must be qualified to do so. In this regard, displacements are distinguished from bidding onto bulletined positions where the successful bidder has thirty days to qualify. The Organization does not dispute the Carrier's interpretation of the Agreement, but insists that the determination of qualifications for a position must be reasonably related to the requirements of the job. In this case, the Organization avers that other fuel truck positions require only a Class "B" license, as did this position when Claimant held it previously. In fact, the Organization notes the position, when bulletined in March 2010, required only a Class "B" license.


The Carrier responds that Third Division Award No. 37951 recognized the Carrier's right to require a Class "A" CDL if the incumbent of the position might be required to operate vehicles that require such a license. Our review of that decision, however, shows that the claimant therein had applied for a Foreman position and "it [was] undisputed that the Foreman position in question could be required to operate a vehicle needing DOT certification and/or a CDL." In light of such a finding, the Division found it reasonable to require such a license as a prerequisite to awarding the position. Significantly, the Division stated, "These Awards and others like them recognize management's prerogative to establish CDL possession as a threshold requirement for a position *as long there is a rational basis for doing so and it is reasonably related to the duties of the position.*" (emphasis added)

In the handling of the claim on the property, the Carrier asserted that the fuel truck operator also served as the back up vehicle operator for the gang truck, which is used to transport the backhoe. In support of its position, it proffered a statement from the incumbent wherein he stated he moved the backhoe on a trailer from job site to job site as the back up driver. Other employees acknowledged seeing him perform this work.

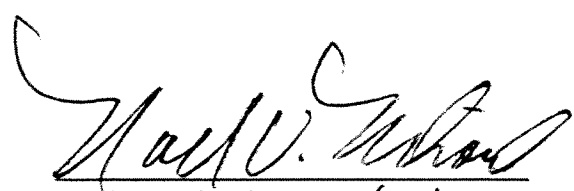
In light of this evidence, we find that the job did, in fact, require a Class "A" CDL. It was more than just an empty requirement that was unrelated to the duties of the position. Accordingly, we find that Claimant did not possess the requisite qualifications to displace onto the position. The Agreement was not violated.

AWARD: Claim denied.


Barry E. Simon
Chairman and Neutral Member


Timothy W. Kreke
Employee Member

June 27, 2011


Noel V. Nihoul
Carrier Member

7/22/11

Dated: May 31, 2011
Arlington Heights, Illinois