

**NATIONAL MEDIATION BOARD  
PUBLIC LAW BOARD NO. 6302  
AWARD NO. 223, (Case No. 236)**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES  
DIVISION - IBT RAIL CONFERENCE**

**vs**

**UNION PACIFIC RAILROAD COMPANY**

William R. Miller, Chairman & Neutral Member  
K. D. Evanski, Employee Member  
J. T. Wayne, Carrier Member

Hearing Date: June 5, 2013

**STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:**

- 1. The Carrier violated the Agreement when it did not allow Mr. R. Francois the opportunity to qualify for a System Semi-Truck Position (System File T-1148U-508/1562806).**
- 2. As a consequence of the violation referred to in Part 1 above, Mr. Francois must be afforded two thousand four hundred eighty-six (2,486) miles for his round-trip travels to and from Cheyenne, Wyoming and two (2) days per diem for lodging and meal expenses during this travel. Mr. Francois must also receive the seniority date as established by his first work day as a System Semi-Truck Driver and that he be given the training and opportunity to qualify."**

**FINDINGS:**

Public Law Board No. 6302, upon the whole record and all the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act as amended; and that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

The facts indicate that on September 23, 2011, the Claimant reported to his new assignment as a semi-truck operator on System Gang 9473 and met with the Gang Foreman Syracuse, to discuss the responsibilities of the position. Claimant was assigned to work with Mr. C. Azula, an experienced and qualified semi-truck operator for instruction and training. The record established that the Claimant spent eight working days with Azula and two and one-half of those days the Claimant was allowed to operate the semi-truck for qualification purposes.

On September 30, 2011, the Carrier informed the Claimant that he was being disqualified from the position of semi-truck operator on System Gang 9473 on the basis that after providing eight days and 1,000 miles of training on the semi, the Claimant was allegedly unable to follow or comprehend instructions in regards to the vehicle's pre-trip inspections and perform basic operational procedures.

It is the Organization's position that the Carrier improperly disqualified the Claimant and failed to provide the full cooperation and assistance of Supervisors and others in his effort to qualify on the position in question. It argued that the record established that the Carrier Manager who disqualified the Claimant simply stated the Carrier did not have the time or resources to get the Claimant qualified. It asserted that the Claimant should have been provided greater assistance and more time to become fully qualified and if that had been provided, he would have been successful in that endeavor. It further argued that Mr. Azulay who was training the Claimant did not take any exception to the Claimant's operation of the semi-truck and related duties. It concluded by requesting that the disqualification be rescinded and the claim sustained as presented.

It is the position of the Carrier that the position Claimant attempted to qualify on requires additional skill and certifications, beyond a Class A CDL, and the Carrier arranged for the Claimant to acquire those skills under the guidance and review of Mr. C. Azulay, a qualified System semi-truck operator. According to it over a period of eight days the Claimant was given the opportunity to operate a semi-truck with Mr. Azulay providing guidance and supervision. However, at the end of the training period, Carrier Manager Haverstick, decided to disqualify the Claimant, based upon the Claimant's performance during the training period and feedbacks from Mr. Azulay. According to the Carrier Mr. Azulay while observing the Claimant determined that the Claimant was not receptive to suggestions for improvement and was argumentative whenever he offered helpful comments and was not willing to accept positive feedback that would make him a successful and safe driver. The Carrier concluded that the disqualification of the Claimant was made due to safety concerns surrounding his ability to perform the duties of a System semi-truck driver. It closed by asking that the disqualification not be disturbed and the claim remain denied.

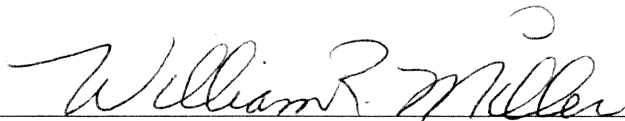
As stated above the Claimant possessed a Class A Commercial Driver License (CDL) and was assigned to Gang 9473. In September 2011, the Claimant attempted to bid onto and qualify for a System semi-truck driver position. The Carrier asserted the position required additional skills and certifications beyond a Class A CDL, and the Carrier arranged for the Claimant to acquire those skills under the guidance of a fully qualified employee Mr. C. Azualy. Over a period of eight days the Claimant was allegedly given the opportunity to operate a semi-truck and become qualified.

The Organization argued that Mr. Azualy who was the Claimant's trainer took no exception to the Claimant's operation of the semi-truck and related duties whereas the Carrier argued that Mr. Azualy determined that the Claimant was not receptive to suggestions for improvement and was argumentative whenever he offered helpful comments and was not willing to accept positive feedback that would make him a successful and safe driver.

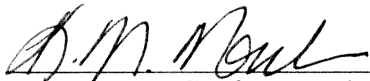
Both parties have relied upon Mr. Azualy's reflections and perception of Claimant's abilities in arguing that the Claimant was either qualified or not qualified. The Board has been presented two different stories as to what the trainer's perception was of the Claimant's abilities and the conflict has left the Board with two different and conflicting opinions offered by the same employee with no other supporting evidence. Because of the conflict of facts between statements as to the qualifications and/or lack of qualification of the Claimant the Board is unable to resolve the dispute and on that basis the Board finds and holds that the claim must remain denied.

**AWARD**

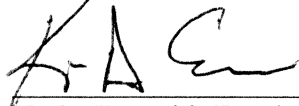
Claim denied.



William R. Miller, Chairman



J. T. Wayne, Carrier Member



K. D. Evanski, Employee Member

Award Date: 8.5.13