

PUBLIC LAW BOARD NO. 6867
AWARD NO. 5
CASE NO. 5

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

PARTIES
TO DISPUTE:

and

UNION PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it bulletined and assigned a truck operator position (truck with trailer) on System Gang 9067 as a Group 26 (d-3) rate of pay position, instead of a Group 26 (d-2) rate of pay position (System File UPRM-9428T/1362464).

(2) As a consequence of the violation referred to in Part (1) above, Claimant E. Ewoldt shall now '*** be paid the differential in wages from his current rate of pay from the position classified as a PPC 628 (\$18.82 per hour) to that of the correct PPC 626 (\$20.32 per hour), for all straight time and overtime hours that he has worked since arriving on this position on March 11, 2003. Claimant also should establish seniority as a semi truck driver, on roster number 361, effective with the assignment to the position on March 2, 2003.”

FINDINGS:

Upon the whole record, after hearing, this Board finds that the

parties herein are Carrier and Employees within the meaning, of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

This claim involves the issue of whether Side Letter No. 3 (SL#3) of Appendix T requires Carrier to bulletin a Class (d-2) truck driver position because it includes a Class A Commercial Drivers License (CDL) requirement on the job bulletin without the Organization having, to establish that the position itself is assigned to pull a trailer. Appendix T is an Implementing Agreement concerning the establishment of Consolidated System Gangs, and includes the addition of two truck driver Group 26 positions to the existing System Gang Truck Operator (d-3) classification, one of which is classified as System Gang Semi Truck Operator (d-2). The pertinent language in SL#3 which must be interpreted in resolving this dispute is as follows:

In addition to semi trucks with standard trailers, an employee assigned to a Class (d-3) position pulling a trailer, and associated with System Gang assignments, which requires a Class A Commercial Drivers License (CDL) will also be bulletined and assigned to Class (d-2).

Additionally, the following provisions of the Agreement are relevant to resolving this claim.

RULE 5 - CLASSIFICATION OF WORK

Positions will be classified and paid in accordance with work performed in conformity with the classifications listed in Rule 6 through 12, and as

established by agreement, rules, and/or traditional practice.

RULE 15 - ESTABLISHMENT OF SENIORITY

(b) Seniority of employees accepting assignment in another class in which seniority is not already held will begin with the date assigned by bulletin...

RULE 20 - BULLETINING POSITIONS - VACANCIES

(a) All new positions or vacancies that are to be filled will be bulletined to all employees holding seniority on the district in the class in which the new position is created or vacancy occurs.

The undisputed facts reveal that Carrier bulletined a boom truck with hy-rail attachment on System Gang 9067 with the requirement of a Class A CDL with the Class (d-3) pay rate of \$18.82/hour on February 20, 2003. Claimant bid on the job and was awarded it effective March 2, 2003, but was not released to report to that position until March 11, 2003. A trailer was pulled once by the truck Claimant was assigned to in the six week period after he assumed the position, and the higher (d-2) rate of \$20.32/hour was paid for such work.

The Organization contends that this is a bulletining issue under SL#3, not a composite service matter, as alleged by Carrier, and is the latest in a series of cases involving improper bulletining of trucks, relying on Public Law Board No. 6302, Awards 16, 17 and 18, and Third Division Award 36159. It asserts that SL#3 governs how positions other than drivers of semi trucks with standard "low-boy" trailers will also be bulletined and assigned to Class (d-2). The Organization posits that drivers of boom trucks which pull trailers now and again but are also used

for other purposes were intended by the parties to fall within this provision as seen by Carrier's inclusion of a Class A CDL requirement for this position, which it asserts should have been posted as a (d-2) rather than a (d-3) position. The Organization relies upon Third Division Awards 29382, 30596, 32218, 32426 and 34147 as supporting its requested remedy which includes granting Claimant Class (d-2) seniority which he would have qualified for were it not for Carrier's violation.

Carrier argues that the Organization has not sustained its burden of proving that it violated the Agreement by posting the vacancy as a Class (d-3) position, citing Third Division Awards 26033, 27851 and 27895. It contends that the language of SL#3 is clear and requires three things to occur before a Class (d-3) truck driver is bulletined as a Class (d-2) semi operator: (1) the position must be assigned to pull a trailer, (2) the position must be associated with system gangs, and (3) it must require a Class A CDL. Carrier admits that the final two criteria are met, but states that there has been no showing that Claimant's position met the first requirement of being assigned to pull a trailer. It notes that the Organization has not disputed the fact that Claimant's truck in this position has rarely, if ever, pulled such a trailer, and is not assigned to pull one.

Carrier refers to Rule 5 which states that positions are to be classified in accordance with the work performed, in contending that it was not required to bulletin this position as a Class (d-2) semi operator and did not violate the Agreement by failing to do so. Carrier asserts that SL#3 has historically been applied in this manner and is what was negotiated, noting that this fact only comes into play if the Board finds the Agreement language ambiguous, citing Third Division Awards 31082,

29142, 29057 and 28030. It asserts that there can be no challenge to its managerial right to place a Class A CDL qualification on this position, and that its having done so does not change the fact that Claimant's position does not meet the SL#3 criteria for a (d-2) classification. Further, Carrier asserts that the requested remedy is inappropriate since, under Rule 15(b), Claimant could only receive seniority in Class (d-2) by being assigned such position by bulletin, which has not occurred in this case. It argues that if the Board were to grant Claimant such a remedy it would infringe upon the seniority rights of other Class (d-2) employees.

After careful consideration of the entire record and arguments of the parties, the Board concludes that the Organization has failed to sustain its burden of establishing a violation of the Agreement in this case. We first note that there is no question about Carrier's right to establish qualifications for any position. This claim does not raise the issue of the legitimacy of Carrier's placing a Class A CDL requirement on the disputed bulletined position. The Organization never took issue with such action. Rather, it premises its argument on the fact that once Carrier placed a Class A CDL requirement onto the system gang boom truck with hy-rail position, SL#3 requires that it be upgraded and bulletined as a Class (d-2).

The Organization never directly addressed Carrier's contention that SL#3 sets forth three criteria for such an upgrade, and that one such requirement is that the employee be assigned to a Class (d-3) position pulling a trailer. The requirement that an employee possess a Class A CDL to bid on the posting does not automatically meet the Organization's burden of establishing that the position itself is one involving "an employee assigned to a Class (d-3) position pulling a trailer." The facts reveal that Claimant's boom truck position was not one assigned to

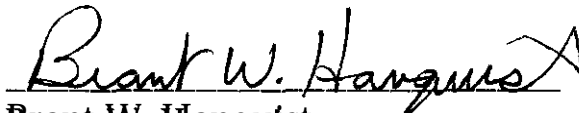
pulling a trailer. Its occasional use in that capacity, or Claimant's ability to operate it pulling a trailer, is insufficient to convert the position from a Class (d-3) truck operator to a Class (d-2) semi truck operator. The Board concludes that the language of SL#3 is clear and unambiguous and supports Carrier's argument in this case, as does the clear language of Rule 5 that sets forth the parties agreement that positions are to be classified consistent with the work performed. Since the Organization was unable to show that Claimant's boom truck hy-rail position was assigned on a regular basis to pull a trailer, it failed to establish that it met the requirement for a Class (d-2) position under SL#3. Accordingly, the claim must be denied.

AWARD:

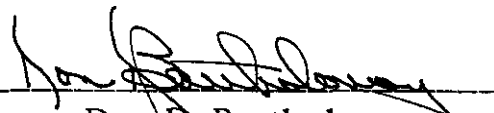
The claim is denied.



Margo R. Newman
Neutral Chairperson



Brant W. Hanquist
Carrier Member



Don D. Bartholomay
Employee Member

Dated: May 30, 2006

Dated: 5-30-06