

**BEFORE
PUBLIC BOARD No. 7097**

**Award No. 3
Case No. 3**

BROTHERHOOD OF MAINTENANCE OF WAY)	
EMPLOYES)	
	)
vs.)	PARTIES TO DISPUTE
	)
UNION PACIFIC RAILROAD COMPANY)	

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed and refused to allow Assistant Track Foreman M. Kuzmicki to displace junior Assistant Track Foreman S. Johnson on February 10 , 2003 (System File 2RM-9424T/1362460 CNW).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant M. Kuzmicki shall now “* * *be compensated for all hours of the position that were worked by the junior employee between Monday, February 10 and Monday, March 3, 2003, at the applicable straight time and overtime rates of pay.”

OPINION OF THE BOARD:

This Board, upon the whole record and all of the evidence, finds and holds that the Employee and Carrier involved in this dispute are respectively Employee and Carrier within the meaning of the Railway Labor Act, as amended, and that the Board has jurisdiction over the dispute involved herein.

Claimant holds seniority in the Maintenance of Way and Structures Department as an assistant track foreman as of July 3, 1998. He was displaced from an Assistant Track Foreman position on System Gang 8574 on February 8, 2003. On February 10, 2003, he attempted to displace Assistant Track Foreman S. Johnson on Gang 2936. Even though ATF Johnson was junior to Claimant, the Carrier refused to allow Claimant to displace him on

the ground that the Gang 2936 ATF position required a Class A Commercial Drivers License (CDL), which Claimant did not have. As a result, the Organization alleges, Claimant lost the opportunity to work from February 10, 2003 through March 3, 2003.

The Organization contends that the Carrier violated the Agreement, particularly Rules 3, 4, 7, and 13, by deeming Claimant unqualified for the ATF position on Gang 2936. According to the Organization, the only vehicle regularly assigned and used by Gang 2936 was a section truck with GVW of 15,000 pounds, whose operation did not require a Class A CDL. Claimant possessed the Class B CDL necessary to operate the section truck. Although the Carrier identified a larger dump truck and trailer that purportedly was assigned to Gang 2936, the Organization contends that the dump truck and trailer, operable only by a Class A Commercial driver, had been assigned to Gang 2926 and was regularly used by that Gang. The Carrier cannot bulletin and assign the same vehicle to two different positions, and cannot impose the Class A CDL requirement without a rational basis, the Organization asserts, citing Third Division Awards 26295 and 35434. The Organization also contends that the Carrier is improperly seeking to combine two separate positions, ATF and Truck Driver.

The Organization does not dispute that due to applicable USDOT regulations and related State and Federal laws an employee must have a Class A CDL in order to operate the dump truck and trailer purportedly assigned to Gang 2936. The only question is whether operation of that vehicle was a proper requirement for the ATF position into which Claimant sought to displace.

Although the Organization asserts that the truck in question was assigned to a different gang, Gang 2926, in April 2002 and continuing, the Organization offers no proof of this assignment. In contrast, this Board finds that the Carrier has established by the evidence of the Manager Track Maintenance that the truck in fact was assigned to Gang 2936 in September 2002. Moreover, the Carrier was within its managerial rights to assign the equipment to Gang 2936; the Organization has identified no contract provision to the contrary. Although the Organization objects that the Carrier improperly combined the positions of ATF and Truck Driver, Rule 7, "Seniority Rights," includes "Assistant Track Foremen-Truck Drivers" in the Assistant Foreman class of the Track Subdepartment. The Organization has failed to show that driving a truck was not a proper task for the Gang 2936 ATF. Thus the Organization has failed to prove that the Carrier improperly combined two positions in assigning the dump truck and trailer to Gang 2936.

Because the dump truck and trailer were properly assigned to Gang 2936, the Carrier had a rational basis for requiring that the ATF on that Gang have a Class A CDL. This

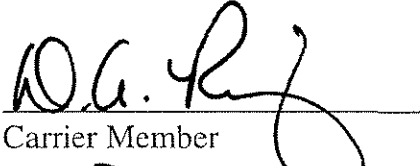
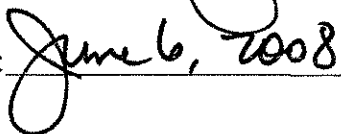
distinguishes the present case from the situations discussed in Third Division Awards 31715 and 35434, where a rational basis for an asserted job requirement was lacking. It is undisputed that Claimant did not have a Class A CDL. For this reason, Claimant was not qualified for the ATF position on Gang 2936, and could not displace the incumbent, even though that employee was junior to Claimant. Accordingly, while this Board is in full agreement with Awards from all Divisions that seniority must not be lightly overlooked, the Board also finds that because Claimant was unqualified for the position sought, his claim must be denied.

Because of this disposition of the claim, it is unnecessary to address the parties' dispute as to the amount of compensation to which Claimant would have been entitled had the claim been sustained.

AWARD

Claim denied.


Lisa Salkovitz Kohn
Neutral Member


Carrier Member
Dated: 


Organization Member