

BEFORE PUBLIC LAW BOARD NO. 7386

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
DIVISION – IBT RAIL CONFERENCE
and
SOUTH KANSAS & OKLAHOMA RAILROAD**

Case No. 4

STATEMENT OF CLAIM: “Claim of the System Committee of the Brotherhood that:

1. The Carrier violated Article 4 – Seniority and Article 7 – Bulletin and Assignment of Positions beginning on January 1, 2010 and continuing when it assigned the Job Bulletin #1-37 position of track foreman at Winfield, Kansas to junior employee K. Brown instead of Mr. N. Laney (System File SK-4007-1).
2. As a consequence of the violation referred to in Part 1 above, the Carrier shall compensate Claimant N. Laney the difference in pay from the trackman rate of pay to the foreman rate of pay beginning January 1, 2010 and continuing until he is properly assigned to the position.”

FINDINGS:

The Organization filed a claim on the Claimant’s behalf, alleging that the Carrier violated the parties’ Agreement when it assigned a track foreman position to a junior employee rather than to the Claimant. The Carrier denied the claim.

The Organization contends that the instant claim should be sustained in its entirety because the Carrier directly violated the Agreement when it disregarded the Claimant’s established superior seniority in this matter, because there is no merit to the Carrier’s defenses, and because the Carrier’s violation resulted in a loss of work opportunity and income for the Claimant associated with the track foreman position at issue. The Carrier contends that the instant claim should be denied in its entirety because the Claimant does not hold a Class A Commercial Driver’s License so he is not qualified to hold the track

foreman position under Article 27, because the Organization made no attempt to establish that the Claimant was qualified for the position, and because the Organization failed to meet its burden of proof.

The parties being unable to resolve their dispute, this matter came before this Board.

This Board has reviewed the record in this case, and we find that the Organization has failed to meet its burden of proof that the Carrier violated the Agreement when it selected a junior employee to the position of track foreman instead of the Claimant. Therefore, the claim must be denied.

Although the Claimant in this matter had more seniority than the eventual selectee, the record reveals that the Claimant was not qualified for the position because he failed to have a commercial driver's license. A commercial driver's license is one of the qualifications for the job.

Article 27 of the parties' Agreement, states the following:

The Carrier will establish general and specific qualifications or certifications for each of the general classifications in Article 3.

...

F. The Carrier's standards for qualifications and certification will be determined at the sole discretion of the Carrier and will be consistent with FRA requirements.

The Carrier has determined that a commercial driver's license is one of the qualifications for the track foreman job at Winfield, Kansas. Since the Claimant did not hold a commercial driver's license, the Carrier had the right to award the job to a more

junior employee who did meet the Carrier's qualifications and requirements.

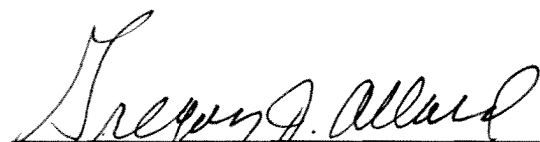
Since the Organization has not met its burden of proof in this matter, the claim must be denied.

AWARD:

The claim is denied.

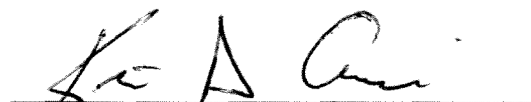


PETER R. MEYERS
Neutral Member



CARRIER MEMBER

DATED: Sept. 17, 2012



ORGANIZATION MEMBER

DATED: 9-17-12