

BEFORE PUBLIC LAW BOARD NO. 6043

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION
IBT RAIL CONFERENCE
and
ILLINOIS CENTRAL RAILROAD COMPANY**

Case No. 72

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

1. The Carrier violated the Agreement when it failed and refused to allow the Claimant to exercise his seniority onto a (mobile) welder helper position on April 1 and 15, 2009 and continuing (System File A09-04-23/IC-BMWE-2009-00049).
2. As a consequence of the violation referenced in Part 1 above, Mr. J. Arreola, Jr. shall be compensated the difference in pay between a trackman position and a welder helper position starting on April 1, 2009 and continuing until he is allowed to exercise his welder helper seniority."

FINDINGS:

The Organization filed the instant claim on behalf of the Claimant, alleging that the Carrier violated the parties' collective bargaining agreement when it refused to allow the Claimant to bump into a welder helper position after he was displaced from his position as a trackman. The Carrier denied the claim.

The Organization contends that the instant claim should be sustained because the Carrier's actions violated the Agreement's seniority provisions, because there is no merit to the Carrier's defenses, and because the requested remedy is appropriate under the circumstances. The Carrier contends that the instant claim should be denied because the Organization has failed to meet its burden of proof, because the Claimant did not have the qualifications necessary to hold a welder helper position, and because no remedy is due the Claimant in that there was no violation of the Agreement.

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 refused to allow the Claimant to exercise his seniority onto a mobile welder helper position on April 1 and 15, 2009. Therefore, the claim must be denied.

The record reveals that the Claimant was displaced by a senior employee and attempted to bump onto a welder helper position. The welder helper position required a CDL, and the Claimant did not have one at that time. The record also reveals that another welder helper position was held at that point by another employee who met the qualifications of the position and held a valid commercial driver's license. The Claimant was properly informed that he did not meet the qualifications to bump into the welder helper position because he did not have the CDL.

This Board recognizes that Rule 20(b) states that no employee will lose his or her seniority in any classification as a result of their inability to attain or maintain a CDL. The rule goes on to state that if there is a CDL requirement, the employee must demonstrate a reasonable effort towards the acquisition of such a license. That employee shall be considered as ineligible for the continued assignment in that position. It is without question that the Claimant did not possess a CDL at the time of the attempted bump on April 14, 2009. The Claimant was required to be qualified for the job and in possession of a CDL on the day of the bump and he was not qualified for the position when he requested the bump.

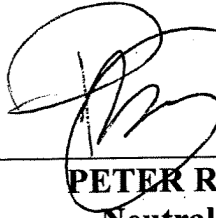
The Carrier cited several awards that support its position. See Third Division

Awards 3152 and 40204; and PLB 6792, Award No. 3.

Since the Organization has failed to meet its burden of proof in this case because the Claimant did not hold a CDL at the time of the requested bump, this Board has no choice but to deny the claim.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member


CARRIER MEMBER

DATED: MARCH 31, 2011


ORGANIZATION MEMBER

DATED: MARCH 31, 2011