

PUBLIC LAW BOARD NO. 6399

**CASE NO. 19
AWARD NO. 19**

**Brotherhood of Maintenance of Way Employes
Division - IBT Rail Conference**

and

**Norfolk Southern Railway Company
(former Norfolk & Western Railway Company)**

Claimant: J. Ellifritt

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement when it denied Mr. J. Ellifritt the opportunity to displace the Brandt truck and specifically displace employe D. Nichols beginning on January 30, 2020 and continuing (Carrier’s File MW-FTW-20-26-LM-203 NWR).
2. As consequence of the violation referred to in Part 1 above, Claimant J. Ellifritt shall now be paid for all hours, expenses and difference in pay being worked by the junior employe.”

FINDINGS:

The Board, after hearing upon the whole record and all the evidence, finds that the Carrier and Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as amended, that the Public Law Board 6399 has jurisdiction over the dispute involved herein and that the parties were given due notice of hearing thereon.

The Claimant has established and maintains seniority in the Carrier’s Maintenance of Way and Structures Department and at all relevant times herein, held seniority as a Machine Operator.

Beginning on January 30, 2020, and continuing, the Claimant was displaced from his position and wished to exercise his seniority to bump to the Brandt Truck position, which would have displaced junior employe D. Nichols. There is no dispute that the Claimant held superior seniority to Nichols.

As the Brandt Truck is heavy machinery, a valid CDL and medical card are required to operate the truck. At the time the Claimant attempted to make his displacement, he was not listed on the

Carrier's registry as having a valid CDL medical card. Accordingly, he was denied the displacement and had to go to another position that did not require a valid CDL and medical card.

The Organization filed this claim on March 5, 2020, which was denied by the Carrier on May 4, 2020. The claim was appealed to the highest officer on-property. As the parties were unable to resolve the claim, it is now properly before this Board for final adjudication.

The Organization contends that the Claimant was denied the opportunity to utilize his seniority in order to displace a junior employe from the Brandt Truck position. The Organization contends that there is no question that the Claimant was the senior employe and was entitled to exercise his authority pursuant to Rule 5 – Seniority Rights, of the controlling Agreement.

The Organization contends that Seniority is one of the most important cornerstones upon which collective bargaining agreements are made. In fact, arbitral boards have long recognized that seniority is a valuable property right of an employe.

The Organization contends that the Carrier did not dispute that the Claimant was in possession of a CDL medical card, but objected to the facility through which the Claimant obtained his medical card. The Organization contends that although the Carrier never provided a list of approved testing locations, it nonetheless argued that the facility that the Claimant used was not preapproved.

The Carrier contends that it properly exercised its discretion to deny the Claimant's attempt to displace a junior employe when the Claimant did not possess a valid commercial drivers' license as required to hold the position. The Carrier contends that nothing in the controlling Agreement prohibits it from preapproving certain vendors to conduct DOT CDL physicals and requiring employees to use that vendor.

The Carrier contends further, that the Organization has failed to present any evidence that the Claimant in fact had obtained a CDL physical at any location, let alone one that was compliant with federal law or the Carrier's standards. The Carrier contends that as the Organization is the party alleging a breach of the parties' Agreement, the Organization must present credible, relevant, and reliable evidence during the handling on the property which is sufficient to sustain its position. The Carrier contends that while the Organization alleged that the Claimant held all the qualifications necessary to hold the desired position, at no time did the Organization present any evidence that the Claimant had, in fact, undergone a CDL physical. The Carrier contends that the Organization never produced a valid medical card, the location where the examination allegedly took place, or the name or credentials of the physician who conducted the examination.

There is ample Board precedent establishing that the Carrier has the right to establish qualifications for assignments, and that those qualifications apply even in the case of a seniority displacement. If the Claimant cannot show that he is qualified for the position, the Carrier is not obligated to permit him to displace a junior employe.

As the moving party, the Organization was obliged to prove all the elements of its claim, including that the Claimant satisfied the necessary qualifications. There is no evidence in the record

that the Claimant held a valid CDL and medical card at the time he wished to displace another employe, and the Organization has not produced such a card. On this basis alone, the claim must be denied.

AWARD

Claim denied.

ORDER

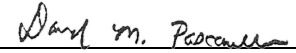
This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.



Scott M. Goodspeed,
Carrier Member



Kathryn A. VanDagens,
Chairman



David M. Pascarella,
Employe Member

Dated: 2-23-2026