

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6402

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

and

UNION PACIFIC RAILROAD COMPANY

)
) Case No. 67
)
) Award No. 58
)

Martin H. Malin, Chairman & Neutral Member
D. D. Bartholomay, Employee Member
D. A. Ring, Carrier Member

Hearing Date: January 25, 2006

STATEMENT OF CLAIM:

1. The Carrier violated the Agreement when it refused to recognize Mr. C. E. Nash's roadway machinery operator seniority dating from January 26, 1981, in connection with his bids for machine operator vacancies advertised in Bulletin No. 2554 (SAAG 9806), Bulletin No. 24556 (Tamper), Bulletin No. 2559 (Ballast Plow 0013), Bulletin No. 2560 (TKO 8903) and when it filled those positions assigning Machine Operator J. F. Trusclair with seniority as such dating from October 29, 1989, Machine Operator D. A. Carter with seniority as such dating from August 3, 2001, Machine Operator A. D. Boudraux with seniority as such dating from December 26, 2003, and Mr. E. C. Williams who did not establish machine operator seniority until August 6, 2004, beginning on August 6, 2004 (System File MW-04-138/1409770).
2. As a consequence of the violation referred to in Part (1) above, Claimant C.E. Nash shall now be allowed the difference in pay between trackman and machine operator for straight time hours worked by the Claimant's choice of machine operator positions identified in Part (1) above plus any and all overtime hours worked by Southern District Tie Gang Nos. 9169 or 9168 at the Claimant's respective overtime rate of pay, with regard to the respective machine and the Tie Gang that it was assigned to beginning August 6, 2004 and continuing until the matter is settled.

FINDINGS:

Public Law Board No. 6402, upon the whole record and all the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute herein; and, that the parties

to the dispute were given due notice of the hearing thereon and did participate therein.

The instant claim arises out of the same matters that were before the Board in Case No. 66, Award No. 57. In Award No. 57, we held that Claimant's disqualification as a Machine Operator was not disciplinary, did not require a hearing, and was not arbitrary and capricious. Unlike Case No. 66 which protested Claimant's disqualification, the instant claim protests Carrier's refusal to award Claimant machine operator positions on which he bid after his disqualification. To the extent that the instant claim repeats the allegations of the claim in Case No. 66, it is denied.

The instant claim differs from Case No. 66 in one potentially significant respect. Claimant's bids came after he successfully completed the CORE training. Nevertheless, the Organization has the burden of showing that Claimant was qualified for the positions to which he bid. The Organization has pointed to nothing that established that by completing the CORE training program, an employee automatically qualified for the position from which he had been disqualified as a result of the incident that led to the employee's diversion from the disciplinary process to CORE training.

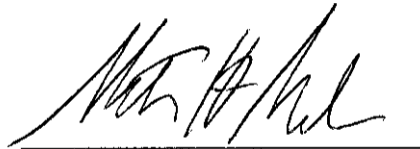
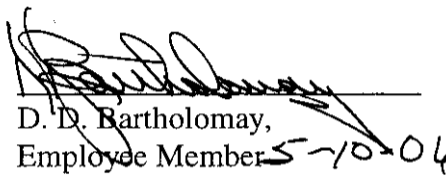
Rule 20(b) of the Agreement provides:

When vacancies advertised under this Rule are not filled by reason of no bids from qualified employees, the position will be filled by (1) appointment of the junior unassigned qualified employee in that classification; (2) appointment of the junior qualified employee from the next lower classification; or (3) the hiring of a new employee, in that order.

Carrier argues that it acted in accordance with Rule 20(b). In the absence of evidence that Claimant was qualified for the positions for which he bid, we agree.

AWARD

Claim denied.


Martin H. Malin, Chairman
D. A. Ring,
Carrier Member
D. D. Bartholomay,
Employee Member 5-10-06

5-10-2006 Dated at Chicago, Illinois, April 27, 2006