

PUBLIC LAW BOARD NO. 6867

AWARD NO. 6

CASE NO. 6

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

PARTIES

TO DISPUTE:

and

UNION PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it bulletined and assigned a truck operator position (truck with trailer) on System Gang 9068 as a Group 26 (d-3) rate of pay position, instead of a Group 26 (d-2) rate of pay position (System File UPRM-9429T/1362463).

(2) As a consequence of the violation referred to in Part (1) above, Claimant C. Elmberg shall now '*** be paid the differential in wages from his current rate of pay from the position classified as a PPC 628 (\$18.82 per hour) to that of the correct PPC 626 (\$20.32 per hour), for all straight time and overtime hours that he has worked since arriving on this position on March 11, 2003. Claimant also should establish seniority as a semi truck driver, on roster number 361, effective with the assignment to the position on March 2, 2003."

FINDINGS:

Upon the whole record, after hearing, this Board finds that the

parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

This claim involves the issue of whether Side Letter No. 3 (SL#3) of Appendix T requires Carrier to bulletin a Class (d-2) truck driver position because it includes a Class A Commercial Drivers License (CDL) requirement on the job bulletin without the Organization having to establish that the position itself is assigned to pull a trailer. It is almost identical to the claim presented to the Board in Case No. 5, except that Claimant in this case received the boom truck with hy-rails position on System Gang 9068, and commenced service in that position on March 2, 2003. Additionally, there is evidence that in the two month period after Claimant assumed the disputed position he was never assigned to pull a trailer. The record reveals that it was anticipated that Claimant's boom truck would only be assigned to pull a trailer on, at most, four occasions that year, when the system gang moved to a new project and the backhoe had to be hauled.

The correspondence and arguments on the property mirrors that set forth in detail in Award No. 5. In this case the Organization presented to the Board two letters from General Chairman David Tanner dated in January and April, 2005, wherein Tanner agrees with General Chairman Bushman's interpretation of SL#3 and indicates his opinion that the addition of the Class A CDL to the Class (d-3) boom truck operator position requires that it be bulletined as a Class (d-2) semi truck operator position. The April letter also references Carrier's agreement to hold one unrelated claim number in abeyance pending the resolution of another.

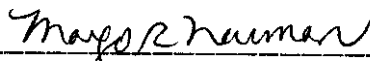
Carrier objects to the Board's consideration of these letters since they represent new evidence which was prepared some two years after the claim was filed and processed.

In Award No. 5 the Board held that the pertinent language in SL#3 is clear and requires three things to occur before a Class (d-3) truck driver is bulletined as a Class (d-2) semi truck operator: (1) the position must be assigned to pull a trailer, (2) the position must be associated with system gangs, and (3) it must require a Class A CDL. While the final two criteria are met in this case, as in Case No. 5 there has been no showing that Claimant's position met the first requirement of being assigned to pull a trailer. The requirement that an employee possess a Class A CDL to bid on the posting does not automatically meet the Organization's burden of establishing that the position itself is one involving "an employee assigned to a Class (d-3) position pulling a trailer." Since the Organization was unable to show that Claimant's boom truck hy-rail position was assigned on a regular basis to pull a trailer, it failed to establish that it met the requirement for a Class (d-2) position under SL#3. Consideration of the newly submitted correspondence from General Chairman Tanner does not change this result.

Accordingly, the claim must be denied.

AWARD:

The claim is denied.



Margo R. Newman
Neutral Chairperson

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Brant W. Hanquist
Brant W. Hanquist
Carrier Member

Don D. Bartholomay
Don D. Bartholomay
Employee Member

Dated: May 30, 2006

Dated: 5-30-06