

PUBLIC LAW BOARD NO. 6867
AWARD NO. 7
CASE NO. 7

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 9061 as a Group 26 (d-3) rate of pay position, instead of a Group 26 (d-2) rate of pay position (System File UPRM-9433T/1363381).

(2) As a consequence of the violation referred to in Part (1) above, Claimant M. Herring 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 18, 2003. Claimant also should establish seniority as a semi truck driver, on roster number 361, effective with the assignment to the position on March 16, 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 identical in almost all respects 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 9061 effective March 2, 2003, the position was abolished effective March 8, 2003 and was re-bulletined on March 6, 2003 with both a Class A CDL requirement and a hazardous material (haz-mat) endorsement. Claimant was assigned to the position effective March 16, 2003 and commenced service on March 18, 2003. Additionally, there is evidence that in the six week period after Claimant assumed the disputed position he was never assigned to pull a trailer. Further, the haz-mat endorsement was required by DOT because the truck hauls fuel and oils in large quantities on occasion.

The correspondence and arguments on the property mirror those set forth in Award No. 5. For the reasons stated by the Board in Award No. 5, this claim must also be denied. 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. There does not appear to be a dispute about Carrier's managerial right to set the qualifications for this position.

AWARD:

The claim is denied.

Margo R. Newman

Margo R. Newman
Neutral Chairperson

Brant W. Hanquist

Brant W. Hanquist
Carrier Member

Don D. Bartholomay

Don D. Bartholomay
Employee Member

Dated: May 30, 2006

Dated: 5-30-06