

**NATIONAL MEDIATION BOARD
SPECIAL BOARD OF ADJUSTMENT NO. 1016**

John C. Fletcher, Chairman & Neutral Member

Mark J. Schappaugh, Employee Member

Jeffrey H. Burton, Carrier Member

**BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYEES**

and

CONSOLIDATED RAIL CORPORATION

Award No. 94

Date of Hearing - February 21, 1995

Date of Award - June 30, 1995

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier assigned junior Machine Operator L. S. Papalas, instead of Mr. M. D. Closson, to the Class 2 backhoe Operator position headquartered at Ashtabula Harbor Yard, Ashtabula, Ohio, per Advertisement Bulletin No. 154, dated January 12, 1993 (System Docket MW-3088).

2. As a consequence of the above-stated violation, Claimant M. Closson shall be allowed eight (8) hours pay at the Class 2 Machine Operator rate and applicable overtime for each workday beginning January 25, 1993, and continuing until such time as he is assigned to the Class 2 Machine Operator position at Ashtabula Harbor Yard.

FINDINGS:

Special Board of Adjustment No. 1016, upon the whole record and all of the evidence, finds and holds that the Employee(s) and the Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the disputes(s) herein; and, that the parties to the dispute(s) were given due notice of the hearing thereon and did participate therein.


The crux of this dispute is whether Carrier could properly deny Claimant assignment to a Machine (Backhoe) Operator position because he did not possess a Commercial Drivers License (CDL) at the time the job was filled. Since 1988 Federal and State Laws require that certain operators of motor vehicles, including highway equipment that would be used to move a backhoe from one site to another, possess a valid CDL. Carrier, and its employees, are obligated to comply with these laws. In as much as the machine involved in this dispute would, from time-to-time be moved from one site to another by State and Federal hiways the operator would be required to possess a valid CDL.


Because Claimant did not possess a valid CDL he was not qualified for the position.

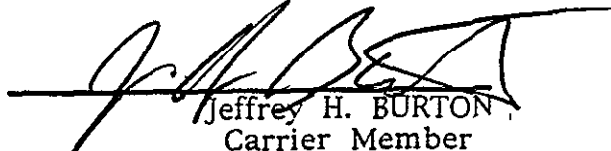
The claim is without merit. It will be denied.

A W A R D

Claim dismissed.


John C. FLETCHER, Chairman & Neutral Member


Mark J. SCHAPPAUGH
Employee Member


Jeffrey H. BURTON
Carrier Member

Dated at Mount Prospect, Illinois, June 30, 1995

*Executive Session held 8/18/95
with no change.*