

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 34013
Docket No. MW-34806
00-3-98-3-517**

The Third Division consisted of the regular members and in addition Referee Robert Perkovich when award was rendered.

**(Brotherhood of Maintenance of Way Employes
PARTIES TO DISPUTE: (
(Burlington Northern Santa Fe Railway Company
((former Burlington Northern Railroad Company)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier improperly bulletined and assigned a section foreman’s position on Bulletin No. F-15 with the requirement that the incumbent possess DOT qualifications (System File T-D-1179-H/MWB 96-10-03AK BNR).**
- (2) As a consequence of the aforesaid violation, the Company shall immediately assign Section Foreman R. D. Boll to the position as permanent section foreman at Hawley. We further request that Claimant Boll be made whole for any and all losses incurred beginning June 26, 1996 and continuing until such time that he is placed upon the position. Losses requested include displacement rights commensurate with permanent assignment at Hawley, including work loss incurred should Claimant Boll be furloughed, pay equal to any and all overtime worked by either Mr. Rindy or any others assigned to the position during claimed period, and any and all away from home expenses incurred greater than Claimant would incur by reporting for work at Hawley.”**

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

This dispute involves the requirements for an employee to hold the Section Foreman position in the Carrier's section gang, which at all relevant times consisted of a Section Foreman and a Truck Driver, at Hawley, Minnesota. The record reflects that for an extended period of time through 1995 those individuals, including the Claimant, who filled that position were not required to be DOT qualified, but rather that possession of a CDL license was deemed sufficient. In June 1996 the Carrier abolished that position and bulletined the Section Foreman position with the requirement that the incumbent be DOT certified. When the Claimant bid on the position his bid was rejected and instead a junior employee with DOT qualifications was selected.

The claim thus presents a conflict between seniority protections contained in the parties' Agreement and the Carrier's right to determine job qualifications. A review of those various seniority protections cited by the Organization show, for example Rule 22, provide that assignments shall be made to the senior qualified applicant. Moreover, we are unable to find in these provisions or any other provisions cited to us a reservation of the work in question. This conclusion is buttressed by the fact that because the gang in question consisted of only two employees it can be reasonably inferred that the Section Foreman might be called upon to drive. Thus, these facts combined with the limitation on seniority placement inherent in the requirement that bidders be qualified, lead us to conclude, as have numerous other Awards (see, e.g., Third Division Awards 12891, 30110, 31093), that the Carrier's determination of what those qualifications should be must be left undisturbed absent arbitrary or capricious considerations. (See, e.g., Third Division Award 28614) The record does not provide a basis for finding any such action and, therefore, the claim must be denied.

AWARD

Claim denied.

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ORDER

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

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 19th day of April, 2000.