

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13121
Docket No. 13049
97-2-95-2-72

The Second Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

**(International Association of Machinists and
(Aerospace Workers**
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (former Chesapeake and
(Ohio Railway Company)

STATEMENT OF CLAIM:

- "1. That, in violation of the Employee Protection Agreement (EPA), and the provisions of the current working agreement, CSXT (former Chesapeake & Ohio Railway Company) arbitrarily and capriciously failed to establish protection for Machinist P.D. Ryder under the EPA Agreement and to place his name on the seniority roster at the Carrier's Danville, West Virginia Shop and the Peach Creek, West Virginia Shop.**
- 2. That, accordingly, CSXT be ordered to reestablish Mr. Ryder's EPA Protection and place his name on the Danville, West Virginia and the Peach Creek, West Virginia seniority roster with a seniority date of March 24, 1994."**

FINDINGS:

The Second 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.

The Claimant herein requests that he be placed on the Carrier's Machinist Seniority Roster at Danville or Peach Creek, West Virginia, and that his Employee Protective Allowance ("EPA") be established effective March 20, 1994. In support of this request, the Claimant relies upon his employment history with the Carrier as described in his letter to the Carrier's Mechanical Superintendent in Huntington, West Virginia. In essence, the Claimant seeks a place on the seniority roster because of the many times that he has worked at either Danville or Peach Creek, West Virginia.

The Carrier, on the other hand, contends that the Claimant did not work a permanent position. Therefore, he was not entitled to the benefits he now seeks.

It appears from the record that the Claimant worked a vacancy at the Carrier's Danville facility for about four months. Therefore, the position should have been advertised and assigned to the senior person.

The Carrier erred by not advertising the position and this error not only resulted in the Claimant being "led along", it also fostered a belief on his part that he had entitlements for which he was not contractually eligible. As far as can be ascertained from the record (and without any consideration being given to whether there were employees at Danville) had the placement involving the Claimant been properly processed, it would have resulted in the selection of the senior person on the transfer list who had indicated a request to transfer. The Claimant, under this scenario, was not the senior person and, therefore, would not have been selected.

AWARD

Claim denied.

Form 1
Page 3

Award No. 13121
Docket No. 13049
97-2-95-2-72

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 Second Division

Dated at Chicago, Illinois, this 6th day of May 1997.