

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 13386
Docket No. 13280-I
99-2-97-2-51**

The Second Division consisted of the regular members and in addition Referee Robert L. Hicks when award was rendered.

(John O. Custer

PARTIES TO DISPUTE: (

(Consolidated Rail Corporation

STATEMENT OF CLAIM:

- “1. The Consolidated Rail Corporation violated the Rules of the Controlling agreement of May 1, 1979, and particularly Rule(s) 2-A-1, 2-A-3, 3-c-2, 4-a-1, 4-B-1 and 5-A-1, When it arbitrarily and capriciously disqualified Machinist J. O. Custer as an M of W Machinist in Conrail Seniority District ‘012’.**
- 2. Accordingly, The carrier shall now compensate Mr. Custer eight hours pay at straight time rate for the days of August 30, 31 and September 1, 1995, and the difference in pay between the position denied Mr. Custer and the position(s) held thereafter by Mr. Custer. Furthermore, if Mr. Custer still desires the position, he shall be provided forthwith the opportunity to obtain such, consistent with the rules of the agreement.”**

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.

Claimant's position was abolished at the close of shift on August 29, 1995. He advised that he would displace a junior employee effective 7:00 A.M., August 30, 1995.

When Claimant reported on August 30, he found the individual he had attempted to displace on the job. He was met by the Equipment Engineer and, after one hour of reviewing electrical and hydraulic blueprints of the various pieces of equipment, Claimant's bump was not allowed. He was told to go on home as he would not be paid.

Therein lies the basis for this claim. The Carrier's examining officer disqualified Claimant on the basis that he was unable to read and decipher the blueprints and because Claimant was alleged to have said he was unfamiliar with the equipment he was to repair.

Claimant denied making the statement and insisted he can read blueprints, and he surely read the blueprints upon which he was tested.

This Board has a restrictive appellate role in the resolution of disputes. The facts in this dispute are divided. Claimant contends he could read the blueprints presented as a test, and the Carrier says he could not. The Carrier says Claimant advised the testing Supervisor he was unfamiliar with the machines used by the Maintenance of Way Department. Claimant denies he made that statement.

There is no sufficient evidentiary basis for resolving this dispute and, accordingly, there is no choice other than to dismiss this claim for failure of proof as has been done by this Board in the past.

AWARD

Claim dismissed.

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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 Second Division

Dated at Chicago, Illinois, this 12th day of April 1999.