

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/Division of TCU
(
(CSX Transportation, Inc.
(The Baltimore and Ohio Railroad Company)

STATEMENT OF CLAIM:

1. That the Carrier violated Rules 15 1/2 and 33 of the controlling agreement, as amended, when they failed to allow Carman Charles N. Thrappas to exercise his contractual rights to the position of crane operator which was advertised during his absence due to illness.
2. That the Carrier be ordered to allow Carman Thrappas displacement under Rule 15 1/2 and that he be awarded the position of crane operator.
3. That the Carrier be ordered to make Carman Thrappas whole for all lost wages arising out of his not being able to occupy the position of crane operator.

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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 waived right of appearance at hearing thereon.

In recent cases involving the same adjudicative issue, the Board held that absent a finding of wrongful judgment vis a vis an employee's fitness and ability for a position, the Board lacked contractual justification to overturn a Carrier's fitness determination. In the case herein, there is no persuasive evidence that the Claimant was a qualified wreck crane operator and thus Carrier's denial decision was based upon sound defensible evaluative considerations. Second Division Award 12012 involving the same parties though a different claimant is directly on point and dispositive of this dispute. See also Third Division Award 28345.

Form 1
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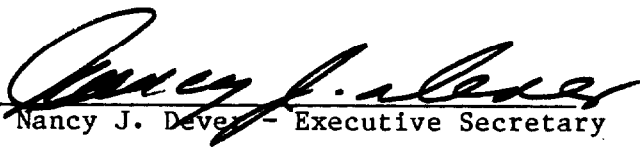
Award No. 12079
Docket No. 11891
91-2-90-2-14

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 10th day of July 1991.