



**Award No. 15154**

**Docket No. MW-15797**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(Supplemental)**

**Levi M. Hall, Referee**

---

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES**

**THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY  
(Eastern Lines)**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it disqualified Mr. C. M. Murray for the position of miscellaneous machine operator beginning August 4, 1963. (Carrier's file 130-236-40.)

(2) Mr. C. M. Murray be allowed the difference between the Miscellaneous Machine Operator's rate and what he was paid at the laborer's rate of pay for each work day beginning with August 4, 1963, and continuing for the duration of the violation referred to in Part (1) of this claim.

**EMPLOYES' STATEMENT OF FACTS:** The claimant has established and holds seniority as a track laborer on the Eastern Division.

Under date of January 25, 1963, the claimant expressed his desire to be considered for service as a miscellaneous roadway machine operator on the Eastern Division by submitting a written application for such service to Superintendent H. J. Briscoe of that division, which read:

"Please accept this as my application for position as miscellaneous machine operator on the Eastern Division."

Even though the claimant's written application was received by Superintendent Briscoe and placed on file in his office, the Carrier used employees junior to the claimant as miscellaneous roadway machine operators on the Eastern Division instead of calling and using him.

The claimant was available and qualified to operate the roadway machines which were assigned to and operated by the junior employees.

The Agreement in effect between the two parties to this dispute dated April 1, 1959, together with supplements, amendments, and interpretations thereto is by reference made a part of this Statement of Facts.

**OPINION OF BOARD:** The Claimant, a regularly-assigned section laborer, made application for position of miscellaneous roadway machine operator, pursuant to Section 4, Article II of parties' Agreement, on Eastern Division of Carrier.

Carrier, after due consideration, found claimant not qualified to operate roadway equipment.

The Board upon review of the entire record finds that the Claimant has not proffered sufficient evidence to meet the burden of proof necessary to establish that Carrier acted in an unreasonable or capricious manner in not assigning him to position of miscellaneous roadway machine operator.

The claim will be denied.

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

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement has not been violated.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 19th day of January 1967.