

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23083  
Docket Number FM-23237

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(St. Louis-San Francisco Railway Company)

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

(1) The Carrier violated the Agreement when **it** improperly closed the **service** record of Richard **Dismuke** (**System File A-9526**).

(2) Richard **Dismuke** be returned to service with seniority **and** all other rights unimpaired and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: The record shows that prior to September **12**, 1977 Claimant was employed as a **trackman**, Class 1, on **Gang 253**, with headquarters at **Aliceville**, Oklahoma. Effective September **12**, 1977 he was displaced from his regular position as **trackman**, at which **time** he filed his **name** and address in accordance with Rule 78 of the applicable Agreement.

While cut off as a **trackman**, Claimant, on February 7, 1978, **made** application for a Class 2 **trackman-driver** position on **System Tie Gang T-2-11**. **He** was awarded the position on February 23, 1978 but failed to report **and** protect the assignment. The **Claimant** contends **that** he was never notified of **assignment** to the position of **trackman-driver**. **His** record was subsequently closed because of failure to protect the **trackman-driver** assignment.

The Organization points out that **trackmen** and trackmen-drivers are in separate classes **under** Rule 5, and **contents** that, **under** the Agreement, Claimant's actions with respect to the **trackman-driver** position (Class 2) could not and did not affect his **seniority** as **trackman** (Class 1).

The Board considers the **Organization's** contention correct and finds that the Carrier was in **error** in closing Claimant's record as a **trackman** in 1978.

We will award that Claimant's **seniority** as **trackman** (Class 1) be restored, but that Claimant not **be** awarded any compensation.

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 was violated to the extent indicated **in** Opinion.

A W A R D

Claims sustained **in** accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A. W. Paulos  
Executive Secretary

Dated at Chicago, Illinois, this 15th day of December 1980.

