

NATION& RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24431
Docket Number MW-24445

Robert Silagi, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employes**
(Southern Pacific Transportation Company (Western Lines)

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

(1) The **Carrier** violated the Agreement when it abolished the position of truck driver (Dump Truck No. **W-796**) on January 24, 1980 and assigned other employes to perform the work of that position (System File **MofW 152-886**).

(2) Because of the aforesaid violation, Truck Driver T. **Espinoza** shall be allowed eight (8) hours of pay at the truck driver's rate in addition to what he was paid for **each** work day beginning **January 24, 1980** and continuing until he is returned to the above-mentioned position."

OPINION OF BOARD: Thomas **Espinoza**, Claimant, holds seniority rights as a Truck Driver, Class No. 25, as of 1955. Since 1979 Claimant drove dump truck No. **W-796** on the Martinez **Roadmaster's** district. On January 24, 1980, Claimant's position was abolished and he was reassigned to another truck driver's position on the Oakland **Roadmaster's** district, at the same rate of pay. Thereafter, Truck No. **W-796** was assigned to a two-man crew in the System Work Equipment **Sub-Department** operating the **Gradall 154** machine utilized to clean drain ditches and right-of-way cuts on the Martinez **Roadmaster's** District.

On April 7, 1980, the Organization filed a claim on **Espinoza's** behalf for pay at the applicable rate for each **working** day beginning February 11, 1980 and continuing until Claimant is returned to his former **position** on the **Martinez Roadmaster's** District. Subsequently the **claim** was modified to demand pay beginning January 24, 1980. Said claim is based upon the alleged violation of certain rules of the Agreement when Truck No. **W-796** was driven by employes who hold no seniority rights as **Truck Driver, Class No. 25**.

The Carrier raises a number of procedural objection to the claim. **However**, there is no need to pass upon the validity of such objection since in **view** of the Board the claim must be denied on its merits.

The Carrier in its submission states that Truck **No. W-796** was used on occasion to haul **various** track materials for use by other track forces within the **Martinez Roadmaster's** District, however, this was during the period when the truck was assigned to the System **Work** Equipment Sub-Department.

This Board **has** held in a long line of decisions that it does not possess the authority to restore positions and must be guided accordingly **in** this case.

It is well settled by a large number of our awards that the burden of proof establishing grounds for a claim rest with the petitioner. A review of the entire record in this case shows that the petitioner has not met that burden. The Organization did submit six letters in support of this **claim.** Unfortunately these letters were not sufficient to meet the burden of proof. On this basis the claim must 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

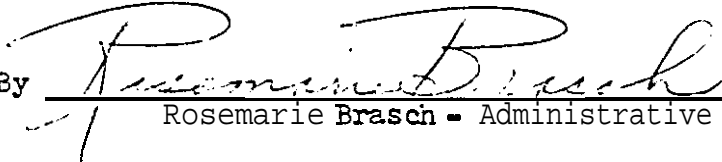
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD **ADJUSTMENT BOARD**
By Order of Third Division

ATTEST: Acting **Executive** Secretary
National Railroad Adjustment Board

By  _____
Rosemarie **Brasch** - Administrative Assistant

Dated at Chicago, Illinois, this 15th day of June 1983.

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