

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25065  
Docket Number MS-24889

I. M. Lieberman, Referee

PARTIES TO DISPUTE: ( (United Steelworkers of America  
(Lake Terminal Railroad Company

STATEMENT OF CLAIM: The dispute involves the seniority rights of employee Jesus **Nieves**.

OPINION OF BOARD: The thrust of the Claim herein is that Carrier violated the Agreement. Rule 30 (a), in not posting a position of either Mechanic's Helper or Small Air Tool Operator and mistakenly assigning a junior **employee** to Claimant to that position. Petitioner alleges that the position in question was not a temporary assignment **but** rather a **new** position requiring posting. Carrier denies that the position in question was anything but a Laborer's position with temporary higher graded work. Both parties concede that Laborer's positions do not require posting.

It is apparent that if the disputed work was that of a Laborer there was no violation of the Agreement and Carrier was free to assign any **employee** in that classification to the work in question. There obviously exists a dispute with respect to the facts since the Organization insists that the work was in a higher classification than that of Laborer and the Carrier argues contrarily. No material in the record permits this Board to resolve this factual issue and in the absence of facts which can be related to the contractual provisions the Board is unable to rule. For the reason indicated the Board has no choice but to dismiss the Claim.

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.



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Claim dismissed.

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By Order of Third Division

ATTEST:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 4<sup>th</sup> day of October 1984.

