

The Third Division consisted of the regular members and in addition Referee Irwin M. Lieberman when award was rendered.

(Brotherhood of Maintenance of Way Employes
PARTIES TO DISPUTE: (
(The Atchison, Topeka and Santa Fe Railway Company

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

(1) The Carrier violated the Agreement when it failed and refused to permit Machine Operator J. D. Conditt to displace a junior Machine Operator on and subsequent to December 11, 1985 (System File 120-3-861/11-1740-40-58).

(2) Because of the aforesaid violation, Machine Operator J. D. Conditt shall be allowed the difference between what he was paid at the trackman's rate and what he should have been paid at the Group 7, Class 3 Machine Operator's rate beginning December 11, 1985 and continuing until the violation is corrected."

FINDINGS:

The Third 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.

Claimant, holding seniority as a Group 7 Class 3 Machine Operator, was cut off based on a force reduction. He was a qualified backhoe operator and attempted to displace a junior backhoe operator on December 17, 1985. Carrier refused Claimant's request to displace on the backhoe based on his driving record, since the position involved the moving of the equipment by truck to different locations. The record also indicates that in a virtually identical claim involving the period between November 29, 1984, and January 25, 1985, the claim was settled by payment to Claimant herein based on Carrier's failure to properly advise the General Chairman of the disqualification.

The Organization maintains that Claimant was a good and safe machine operator who had a valid Texas driver's license. It is argued that Carrier arbitrarily gave preference to a junior backhoe operator in violation of Rule 3(c).

Carrier insists that the backhoe position requires the incumbent to have a "good and safe driving record in order to transport the machine by company truck from one point to another." In this instance, according to Carrier, Claimant's record from the Texas Department of Public Safety reveals that he had nineteen traffic violations for the period from July 5, 1980 to November 4, 1984.

An examination of the record of this Claim does not reveal any requirements for the position but that the incumbent have a valid driver's license. In this dispute Claimant did have such license. Further, the Carrier's reliance on traffic citations going back some five years is at best questionable; there is no indication of the seriousness of the violations nor is there any standard specified as to what constitutes a "good and safe driving record." It also must be noted that there is no information as to whether Claimant ever had an accident in a motor vehicle; he clearly had a safe and good record as a backhoe operator. The essential element of this dispute, however, is the fact that Claimant was qualified for the position, had a valid driver's license and had seniority to displace into the position. The Claim must be sustained. However, with respect to compensation, the period should end on the date he was assigned to a Group 7, Class 3 machine, on January 6, 1986.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 29th day of March 1990.