

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29352
Docket No. MW-29008
92-3-89-3-434

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(St. Louis Southwestern Railway Company

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

(1) The Agreement was violated when the position of #1 Bridgeman on Bridge Gang #4110 was awarded to Mr. T. C. McCarty on August 1, 1988 instead of recalling B&B employe S. E. Swaim (System File MW-88-87-/CB/475-72-A).

(2) As a consequence of the violation referred to in Part (1) hereof, the Claimant shall be allowed three hundred thirty-six (336) hours at the #1 Bridgeman's rate of pay and continuing and he shall be awarded a corresponding #1 Bridgeman's seniority date."

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.

The Claimant holds seniority as a #1 Carpenter and Tinner Foreman in Seniority District 2 (South of Texarkana). On August 1, 1988, the Carrier assigned another employee to the position of Bridgeman #1 in Seniority District 2. The Organization contends that the Claimant should have been offered the opportunity for the position in his own seniority district. The Organization further contends that the other employee does not hold Bridgeman seniority in Seniority District 2.

In defense of its assignment, the Carrier points to the Bridgeman #1 seniority roster for Seniority District 2, dated January 1, 1988, which shows the other employee with a seniority date of September 15, 1987.

The Organization disputes this listing and challenges the Carrier to provide written evidence of the means by which the other employee was given such seniority. The circumstances do not require such proof, however. In reference to seniority rosters, Article 6, Section 2 provides that seniority dates are "permanently established if not protested within ninety (90) days from the first posted." In the absence of such timely challenge, the Carrier properly relied on the seniority roster in its assignment. The Claimant does not contend that he held Bridgeman #1 seniority.

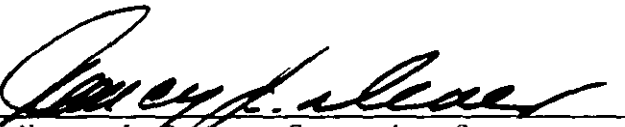
The Organization refers to numerous other disputes concerning the Claimant's job rights, but these are not relevant to the facts here under review.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Over - Executive Secretary

Dated at Chicago, Illinois, this 25th day of August 1992.