

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 29594  
Docket No. MW-28007  
93-3-87-3-531

The Third Division consisted of the regular members and in addition Referee Gilbert Vernon when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance  
(of Way Employes  
(National Railroad Passenger  
(Corporation (AMTRAK)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier failed and refused to allow Mr. R. Wiggins to displace junior employes T. Schisler or B. Julius on February 11, 1986 (System File NEC-BMWE-SD-1495).

(2) As a consequence of the aforesaid violation, Mr. R. Wiggins shall be allowed forty (40) hours of pay per week, beginning February 11, 1986 and continuing until he is recalled to service or permitted to exercise his seniority, in accordance with Rules 2 and 18."

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 employe 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 dispute here is over the interpretation of displacement rights when exercising seniority. Violations of the Agreement are alleged as a result of Carrier's refusal to allow a senior employee to displace either of two junior employees on or about February 11, 1986.

The parties' respective positions distill down to essentially this: The Organization contends Carrier should have allowed the Claimant an opportunity to demonstrate his qualification to operate two pieces of machinery; the Carrier states an employee seeking to displace, in the circumstances of the instant dispute, must be presently qualified and, since Claimant was not immediately qualified, he was not entitled to displace. There is no dispute that Claimant had not been previously trained or certified to operate either piece of machinery in question.

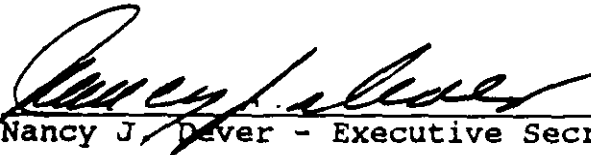
Our review of the record reveals that Carrier offered substantial evidence in support of its contention that an approximately ten year practice, acquiesced in by the Organization, established the requirement that employees seeking to displace onto specialized equipment must be immediately qualified to operate the equipment. On this record, the Organization did not challenge the Carrier's evidence. Accordingly, we find that the Carrier did not violate the Agreement as charged.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of March 1993.