

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29888
Docket No. MW-28911
93-3-89-3-315

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Union Pacific Railroad Company (former
(Missouri Pacific Railroad)

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 Machine Operator D. Reaves, Jr. to exercise his seniority to displace junior Machine Operator D. W. Burrows from the ATS-11 machine on Gang 1027 at North Little Rock, Arkansas on January 21, 1988 (Carrier's File 880300).
- (2) As a consequence of the aforesaid violation, Mr. D. Reaves, Jr. shall be allowed eight (8) hours of pay at the machine operator straight time rate."

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.

Just prior to the Claim date, the Claimant, who holds seniority as a Roadway Machine Operator, had his position abolished due to a force reduction. Subsequently, he attempted to displace a junior machine operator on machine number ATS-11 which is a Plasser Corporation tamper. He was denied displacement on the basis he was not qualified.

It is the finding of the Board that this matter is controlled by Rule 2(G) of the Agreement. As such, in order to displace under these circumstances, the Claimant must be qualified and is not entitled to a trial period. Thus, the question is not whether the Claimant is capable of doing the job after an opportunity to learn the machine but whether he is qualified to immediately assume the position and meet the normal expectations with respect to proficiency, safety, etc.

The Claimant's position is not so much that he is qualified but that (in his words) he has the "sufficient ability to operate any machine...if I'm given the opportunity." The Carrier asserts that he is not qualified in the judgement of his supervisors and has not successfully operated machines of this type.

After assessing the arguments and evidence, the Board must conclude that the Claimant has not demonstrated to our satisfaction that he was qualified to operate the tamper at the time he sought to displace the junior employee.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 26th day of October 1993.