

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32587
Docket No. MW-31257
98-3-93-3-279**

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Southern Pacific Transportation Company
(Western Lines)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier:**
 - (a) assigned a junior employe to a Class 32A Spike Puller Operator (Dual) position within a bulletin dated January 17, 1992; and**
 - (b) failed and refused to afford Mr. F. O. Serrato a seniority date as a Class 32A Spike Puller Operator (Dual) in accordance with the March 1, 1981 letter of Understanding (Carrier's File MW92-70 SPW).**
- (2) As a consequence of the violation referred to in Part (1) above, the Carrier shall place Mr. F. O. Serrato on the System Steel Gang 1B as a Class 32A Spike Puller Operator (Dual), with a corrected seniority date of March 1, 1981 and the Carrier shall make all necessary changes and corrections on all Divisions, including the Shasta Division, Western District, in the class of Class 32A Spike Puller Operator (Dual)."**

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 were given due notice of hearing thereon.

This claim must be dismissed as untimely, without consideration of the merits.

The claim is based on a contention that under an Agreement effective March 1, 1981, seniority dates of certain employees were incorrectly shown on Roster 32(a). According to the Organization, the March 1, 1981 Agreement contemplated that a consolidated roster was to be created by placing all employees with Spike Driver seniority on the Class 32(a) Spike Driver (Dual) seniority roster, with the same seniority date they previously held. However, the employees on the Sacramento Division were each given new seniority dates while the employees on the Shasta Division were given their same seniority dates. If Carrier had given Mr. F. O. Serrato his correct seniority date on Roster 32(a) he would have had sufficient seniority to be assigned to the position bulletined on January 17, 1992, the Organization claims.

Rule 69(d) of the Agreement provides that seniority dates on rosters "shall not be open to question" if protests are not filed on "two successive rosters." There is no evidence that Mr. F. O. Serrato, the named Claimant in this matter, or that any of the unnamed Claimants protested his/their seniority standing(s) on Roster 32(a) within two successive roster periods subsequent to the posting of the initial roster established by the March 1, 1981 Agreement. Accordingly, it is way too late to now entertain claims that are based on an allegation that employees on Roster 32(a) are shown with the wrong seniority dates.

AWARD

Claim dismissed.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 22nd day of May 1998.