

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33595
Docket No. CL-33211
99-3-96-3-647**

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

**(Transportation Communications International Union
PARTIES TO DISPUTE: (
(Burlington Northern Santa Fe Railroad**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-11407) that:

- (a) Carrier violated the provisions of the current Clerks’ Agreement at Ft. Madison, Iowa when it unilaterally designated J. W. Bird’s seniority ranking on the roster without consultation with the Division Chairman, and**
- (b) Claimant J. W. Bird shall now have his seniority ranking assigned on the roster by means of a lottery system, in conjunction with the Division Chairman and, should the lottery system so dictate, he may exercise seniority rights to any position currently held by J. M. Kaminski.”**

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.

Claimant and J. M. Kaminski commenced service on the Illinois Division Station Department Seniority District at the same time on March 14, 1994. Without consulting the Organization, the Carrier placed Kaminski above Claimant on the Seniority Roster based upon Kaminski's higher score on a Rules examination.

Rule 5 provides that "If two or more employes commence service on the same seniority district at the same time on the same date, the employing officer in conjunction with the Division Chairman shall designate their respective seniority ranking."

In the circumstances of this case where the employees started at the same time on the same day, Rule 5 clearly required consultation with the Division Chairman before placement on the Seniority Roster. That did not occur. A violation of Rule 5 has been shown.

As a remedy, the matter is remanded to the parties to agree upon a reasonable method to break the seniority tie between Claimant and Kaminski. Should the parties be unable to do so, a coin flip shall be the determining method. Should Claimant prevail and have the greater seniority, he shall be entitled to exercise those rights as requested in the claim.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 16th day of November 1999.