Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 39033
Docket No. MW-38072
08-3-NRAB-00003-030519
(03-3-519)

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Springfield Terminal Railway Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it assigned junior employe D. Scott to perform equipment operator work (operate speed swing) on November 14 and 16, 2001, instead of Mr. D. A. Ripley, Sr. (Carrier's Files MW-02-26 and MW-02-16).

(2) As a consequence of the violation referred to in Part (1) above, Claimant D. Ripley shall now be compensated for sixteen (16) hours' pay at the respective straight time rate of pay."

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.

According to the Organization's Submission, the instant dispute is an ". . . exceedingly simple . . ." case involving the principle of seniority. Although additional suggestions of impropriety were made during the development of the record on the property, as the Statement of Claim shows, only the seniority aspect of the dispute was advanced to the Board.

The dispute consists of two separate claims that an employee named "David Scott" operated a speed swing on different dates under circumstances that denied the Claimant a work opportunity. In the claim for work performed on November 14, 2001, the Carrier twice asserted that David Scott was senior to the Claimant on the Equipment Operator roster. Nothing in the record for that claim refutes the Carrier's assertion that David Scott was senior to the Claimant.

On the claim for work performed on November 16, 2001, the Carrier again asserted that David Scott was senior to the Claimant. The Organization provided two pages from the Equipment Operator seniority list. The pages only show ranked positions on the list from Number 94 through Number 187. The Claimant's name is underlined at Number 137 with a seniority date of June 12, 1998. The list also has underlining at Number 167 which corresponds with an employee identified only as "J. D. Scott" with a seniority date of August 20, 1999. However, careful review of the record fails to reveal any evidence whatsoever to establish that J. D. Scott is the same person as David Scott who performed the work.

In claims of this kind, the Organization and the Claimant bear the sole burden of proof to establish the facts essential to the perfection of the claim. On the record, that burden of proof has not been satisfied. The record does not establish that the David Scott who performed the disputed work was junior to the Claimant on the Equipment Operator seniority list.

AWARD

Claim denied.

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 April 2008.