

**Award No. 11297**  
**Docket No. MW-10236**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

(Supplemental)

Preston J. Moore, Referee

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES**

**MISSOURI-KANSAS-TEXAS RAILROAD COMPANY**

**MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the effective Agreement when it laid off Section and Extra Gang Laborer J. R. Fox from February 8 through February 15, 1957 instead of junior Section and Extra Gang Laborer James Greer.

(2) Section and Extra Gang Laborer J. R. Fox now be allowed the exact amount of monetary loss suffered account of the violation referred to in Part (1) of this claim.

**EMPLOYES' STATEMENT OF FACTS:** At the close of the work period on February 8, 1957, the Claimant who was regularly assigned to Extra Gang No. 9 as an extra gang laborer was laid off, while Extra Gang Laborer James Greer was retained in service as an extra gang laborer in that same gang.

The Claimant holds seniority as a section and extra gang laborer as of May 1, 1951, while Mr. James Greer holds seniority as a section and extra gang laborer as of October 21, 1952.

As of February 8, 1957, there was no classification of Truck Driver, Chauffeur, or Laborer-Truck Driver encompassed within the scope of the subject agreement, nor any requirement that section and extra gang laborers must be qualified to operate highway trucks as a condition to the recognition of their seniority rights as section and extra gang laborers.

The Carrier's action in laying the Claimant off while retaining a junior employe in service on February 11, 12, 13, 14, and 15, 1957, was protested

For failure to so qualify himself, Fox is responsible for this loss of work and the claim should be denied.

### DAMAGES

The Carrier further shows Fox cannot, because of his failure to act as required by the agreement, legitimately claim loss.

Only the employe may exercise the seniority he possesses. The placing of men by the Carrier before receipt of expression from the employe where the employe desires to exercise his seniority is incompatible with any thought the employe exercises seniority.

And so it was Fox's responsibility if he desired to work after cut off as laborer on Gang No. 9, to exercise that seniority. This he did not do when notified he was cut off Gang 9, February 8, 1957. It was Fox's further responsibility, if he wished laborer's job driving truck, to qualify as truck driver.

As heretofore shown, Fox's failure to qualify himself for the position he sought was responsible for his loss of time and no sum is due him, and the Carriers respectfully request the claim be denied.

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All data submitted in support of the Carriers' position have been heretofore submitted to the employes or their duly accredited representatives.

The Carriers request ample time and opportunity to reply to any and all allegations contained in Employees' and Organization's submission and pleadings.

Except as herein expressly admitted, the Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas, and each of them, deny each and every, all and singular, the allegations of the Organization and Employees in alleged unadjusted dispute, claim or grievance.

For each and all of the foregoing reasons, the Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas, and each of them, respectfully request the Third Division, National Railroad Adjustment Board, deny said claim and grant said Railroad Companies, and each of them, such other relief to which they may be entitled.

(Exhibits not reproduced.)

**OPINION OF BOARD:** This is a dispute between The Brotherhood of Maintenance of Way Employees and The Missouri-Kansas-Texas Railroad Company and The Missouri-Kansas-Texas Railroad Company of Texas.

On February 11, 12, 13, 14, and 15, 1957 the position of section and extra gang laborer was filled by an extra gang laborer who was junior in seniority to the Claimant. The position included the duties of driving a truck. At the time there was no classification of laborer truck driver. The duties of the position were not changed. The Claimant was not qualified to fill the position.

The claim was denied on that basis on February 21, 1957.

For the foregoing reasons, we find the Agreement was not violated.

**FINDINGS:** The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

**AWARD**

Claim denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of **THIRD DIVISION**

**ATTEST: S. H. Schulty**  
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of April, 1963.