

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19281  
Docket Number MSX-19310

Clement P. Cull, Referee

PARTIES TO DISPUTE: (Lyle Kreuter  
(  
(REA Express, Inc.

STATEMENT OF CLAIM: This is to serve notice, as required by the rules of the National Railroad Adjustment Board of my intention to file an ex parte submission on (30 days from date of this notice) covering an unjusted dispute between me and the REA Express Company involving the question:

Due to improper action and/or inaction of J. P. Crozier Mgr. REA Express 1310 Kishwaukee St. Rockford, Illinois, and his immediate superior Mr. Chapman, Regional Mgr. I have suffered loss of wages and work, from September 30, 1970 thru March 24, 1971.

A position to which I should have been entitled under rule #3 paragraph I of our working agreement was awarded to a junior man. My repeated requests to be qualified (by the company, a test for said position) were ignored by Mr. Crozier, and former Mgr. Mr. Barker.

On November 13, 1970 Mr. Chapman ordered a senior man to fill such a position, without being qualified (or taking the Co. test) as a result I am still layed off while a junior man is working. It is my opinion that in order to rectify this, I should be reimbursed for work lost and given a chance to qualify.

OPINION OF BOARD: Claimant herein, L. Kreuter, contends that he should have been awarded a position of tractor-trailer driver which Carrier assigned to a junior employee. There is a conflict in the evidence as to whether Claimant filed a bid for the position. Carrier contends that he did not while Claimant avers that he did. It is well settled that in cases before this Board the burden of proving the case rests with Claimant/Petitioner. The mere assertion that he had bid for the job, raised for the first time in his rebuttal to Carrier's submission, does not, without more, constitute evidence which will prove that the bid was made. Moreover, the record reveals that Claimant failed to pass a qualifying test given him by Carrier on March 24, 1971. The Organization's local representative was present at the location where the test was given. Neither the Organization's representative nor the Claimant produced any evidence to show that the test was unfair or improperly administered. Claimant suggests, but does not prove, that his disqualification as a result of the test was an attempt to nullify any award of wages allegedly due as a result of Carrier's alleged failure to appoint him to the position. Such assertions without proof is not evidence that the test was unfair. Nor does the mere fact that he was subsequently qualified by a test given him by Carrier on June 29, 1971 prove that the test in March was unfair or irregular.

As Claimant has not sustained his burden the Claim must be dismissed for lack of proof.

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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~~ claim be dismissed for lack of proof.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

E. A. Killen  
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of June 1972.