

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23234  
Docket Number MW-23174

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employees  
{ Fort Worth and Denver Railway Company

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

(1) The Carrier violated the Agreement when it assigned an employe with no seniority in the Road Equipment Subdepartment (L. J. Arebalo) to the position of Auto Spiker Operator (#1231) as advertised by Bulletin No. 26 dated June 8, 1978 instead of assigning Machine Operator R. L. Estep thereto (System File F-16-78).

(2) Because of the aforesaid violation, Machine Operator R. L. Estep be reimbursed for the additional expenses he incurred (\$221.47) filling a machine operator's position at Vernon, Texas."

OPINION OF BOARD: The Claimant had no prior experience as a machine operator, however he was placed on the "liner operator" position effective June 12, 1978.

Prior to serving for a 30 day period, he bid on another position. Rule 7 specifies that employes who are promoted and who fail to qualify within a 30 day period will not acquire seniority as a result of filling the position.

The position which the Claimant sought was filled by another individual who was senior to the Claimant as a laborer.

Inasmuch as the second individual was senior to the Claimant as a track laborer, it would seem that the only way the Claimant could prevail in this dispute would be to show that he had seniority as a machine operator. Yet, it appears clear from the referred to language above, that during the initial 30 day period the Claimant did not obtain and possess machine operator seniority. The Claimant did not show that he was qualified and thus, we have no alternative but to deny the claim.

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

That the parties waived oral hearing;

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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A. W. Paulson  
Executive Secretary

Dated at Chicago, Illinois, this 16th day of March 1981.