

Eckehard Muessig, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Southern Pacific Transportation Company
(Eastern Lines)

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

(1) The Agreement was violated when the position of track laborer as advertised by Bulletin No. 99 dated June 4, 1982 was awarded to an applicant junior to Track Laborer Andres Rios, Jr. (System File MW-82-156).

(2) Claimant Andres Rios, Jr. shall be awarded the position of track laborer as advertised by Bulletin No. 99 and he shall be compensated for additional expense incurred, if any, because of the violation referred to in Part (1) hereof.

OPINION OF BOARD: This dispute essentially arose because the Claimant contended that he had been deprived of his seniority rights. The Carrier had determined that the Claimant was not physically qualified to perform the work of a bulletined track laborer position. It then assigned an employe junior to the Claimant to the position.

The Carrier's prerogative, with respect to determining fitness for duty, has been well established. Here, we find that the reason that the Claimant was not assigned to the position in dispute was based upon his physical incapacity for full duty at the time of assignment of the junior employe. Therefore, while the Claimant's concerns and contentions are understandable, given the circumstances herein and absent a finding of arbitrary or capricious action on the Carrier's part, we must 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 Employes involved in this dispute are respectively Carrier and Employes 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

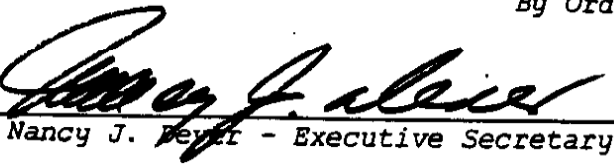
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Peyer - Executive Secretary

Dated at Chicago, Illinois, this 15th day of March 1985.