

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25436
Docket Number MW-25309

Herbert L. Marx, Jr., Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
Seaboard System Railroad

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

(1) The Carrier violated the Agreement when it failed to bulletin and fill a vacancy in the position of Class III front end loader-backhoe operator on Roadmaster T. M. Lee's district (Jacksonville Terminal) on the Jacksonville-Tampa Division [System File 37-SCL-82-2/12-6(82-1113) K3].

(2) Because of the aforesaid violation, Mr. R. P. Rinhhardt shall be allowed the difference between the Class III Machine Operator's rate and what he was paid at the trackman's rate sixty (60) days retroactive from January 25, 1982 and continuing until such violation has been corrected or discontinued.

OPINION OF BOARD: The facts of record indicate that the Operator's position should have been bulletined under Rule 8. The rule, however, contains no penalty for failure to bulletin. There is no evidence, furthermore, that the Claimant would have bid on the position if bulletined or would have qualified. The Board cannot base an award on speculation and conjecture.

Under the unusual circumstances of this case, the Board concludes that the Claimant should be offered immediate opportunity to qualify for an Operator's position similar to the position involved in the present dispute, and, if he qualifies, he shall be offered the next such vacancy that develops with appropriate adjustment in seniority date.

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 violated.

A W A R D

Claim sustained in accordance with the Opinion.

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By Order of Third Division

ATTEST:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of April 1985.