

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30593
Docket No. MW-29874
94-3-91-3-249

The Third Division consisted of the regular members and in addition Referee Charlotte Gold when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(CSX Transportation, Inc. (former
(Louisville and Nashville Railroad Company)

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

- (1) The Agreement was violated when the Carrier improperly advised Mr. K.R. Marple concerning the exercise of his seniority and thereby deprived him of the opportunity to exercise his seniority on the Knoxville Section Gang beginning February 14, 1990 [System File 4(1)(90)/12(90-440) LNR].
- (2) As a consequence of the aforesaid violation, Mr. K.R. Marple shall be reimbursed in the amount of seven hundred fifty-eight dollars and forty-six cents (\$758.46) for the expense he incurred as a result of working at locations other than Knoxville, Tennessee."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

This case poses an irreconcilable dispute in facts. Claimant seeks expenses for Carrier's failure to allow his seniority on the Knoxville Section Gang beginning Wednesday, February 14, 1990. In his original claim, Claimant wrote that he reported to work at Patty, Tennessee, on February 14 and it was not until the following weekend that he learned that a younger man was working on the Knoxville Section Gang. Claimant alleges that he then called his Supervisor, who said that he had no knowledge of the junior man working and there was nothing he could do. The Supervisor reported, however, that Claimant never asked him to go to Knoxville.

This Board has no means for determining what occurred in this case. Given that Claimant bears the burden of proof here, and has failed to meet that burden, his claim must be dismissed. We have so held in numerous Third Division Awards. (See Third Division Awards 28988, 27738, 26428, 26291, 26200, and 25973.)

AWARD

Claim dismissed.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 2nd day of December 1994.