

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31507
Docket No. MW-32101
96-3-94-3-501

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Elgin, Joliet and Eastern Railway Company

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

- (1) The Agreement was violated when the Carrier awarded a crane operator position advertised in Bulletin No. 9529 under date of June 7, 1993 to junior employee O. Johnson instead of Mr. N. Iseminger (System File SAC-16-93/TM-35-93).
- (2) As a consequence of the violation referred to in Part (1) above, the Carrier shall pay:

'... all pecuniary losses suffered by N. Iseminger due to the junior employee working his stead, including his monthly salary and overtime worked by O. Johnson, commencing June 14, 1993, and continuous, until this matter is resolved.'

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 the dispute involved herein.

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

Claimant has over 26 years of service with the Carrier, originally holding seniority in the B&B Department. In accordance with the January 1, 1982 Agreement, Claimant established seniority as an Industrial Elevating Transporter Operator effective February 14, 1984. On March 8, 1993, Claimant was furloughed as an IETO. On June 7, 1993, the Carrier advertised for bids as a Crane Operator in the B&B Department. The position was awarded to an employee junior to the Claimant, causing this claim to be filed.

The Carrier argues that Claimant was recalled as an IETO on May 16, 1993 and that Claimant worked as same on that date. The letter of recall was sent to a location that the Claimant had not lived in for over 20 years. Claimant states that the work performed as an IETO was in response to phone calls from the Carrier, and in fact Claimant only worked ten days as an IETO after May 16, 1993 through the end of the year.

The Carrier further argues that if the Claimant gives up the IETO seniority it will allow the Claimant to displace on the Crane Operator position. However, it fails to cite a Rule requiring such action.

After a review of the file, it is apparent that the Carrier improperly denied the Claimant the right to hold the Crane Operator position. The January 1, 1992 Agreement permits employees to return to the sub-department from which transferred when they can no longer hold an IETO position. The Carrier's position that Claimant was recalled to an IETO position on March 16, 1993 is untenable. Working ten days in six and one-half months is hardly a regular position.

The Claimant went on sick leave on March 21, 1994 and the Organization agrees any liability ceased on that date. Therefore, the Board will sustain the claim to the extent that the Claimant will be allowed the earnings of the Crane Operator position beginning June 14, 1993 until March 21, 1994, less any earnings made as an IETO during this period.

AWARD

Claim sustained in accordance with the Findings.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 23rd day of May 1996.

SERIAL NO. 385

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

INTERPRETATION NO. 1 TO AWARD NO. 31507

DOCKET NO. MW-32101

NAME OF ORGANIZATION: (Brotherhood of Maintenance of Way Employees

NAME OF CARRIER: (Elgin, Joliet and Eastern Railway Company

This matter having returned to the Board for an Interpretation at the request of the employees. The Board having reviewed the submission of both parties finds the Award that was rendered on May 23, 1996 is clear as sustained by the Findings.

In its response to the employees' request for an Interpretation, the Organization raises arguments which were never raised on the property. The Board did not address those arguments because they were not raised on the property, and, pursuant to Circular 1, we are jurisdictionally unable to consider arguments which are raised for the first time before the Board.

The Board finds that the request for the Interpretation is denied, as the original Award is clear and unambiguous.

Referee Robert G. Richter who sat with the Division as a neutral member when Award 31507 was adopted, also participated with the Division in making this Interpretation.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 24th day of January, 2001.