

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Form 1

Award No. 31556  
Docket No. MW-32188  
96-3-94-3-518

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

**PARTIES TO DISPUTE:** (Brotherhood of Maintenance of Way Employees  
(  
(Union Pacific Railroad Company (former Missouri Pacific  
( Railroad Company)

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

- (1) The Agreement was violated when the Carrier advertised and awarded a machine operator position (Bulletin No. SED00855), effective June 25, 1993, to junior employee C.F. Northern instead of Mr. D. Lain (Carrier's File 930707 MPR).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant D. Lain shall be:  
  
"... allowed a seniority date of 6-25-93 as a machine operator, above Mr. Northern on the appropriate roster, and that he be made whole for a (sic) wage loss suffered at the Machine Operator rate, from 6-25-93 to continue until rectified..."

**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.

On June 11, 1993, the Carrier advertised one position of a Machine Operator. There were 22 applicants. Two of these applicants possessed seniority dates within the

Machine Operator classification. These employees were accorded higher preferences for positions advertised on other bulletins by the Carrier.

However, the Carrier assigned the Machine Operator position to an employee who did not hold seniority in the Eastern District Tie Gang (the location of the position at issue here). This employee did hold a Machine Operator seniority date of April 6, 1989 on the Illinois Division. The Claimant had Machine Operator Helper seniority established on March 22, 1991 in the Eastern District.

The Carrier argues that the Claimant did not possess the necessary fitness and ability and, therefore, pursuant to its authority under Rule 10(a), he was not selected for the position.

Rule 10(a) provides as follows:

“Rule 10.(a) Promotions shall be based on ability, merit and seniority. Ability and merit being sufficient, seniority shall prevail, the management to be the judge subject to appeal.” (Emphasis added)

Numerous Awards of this Board, many of which were relied upon by the Carrier, have dealt with the Carrier's prerogative to determine fitness and ability of its work force. These have held that, when such determinations are made, they should not be disturbed unless it can be found that the Carrier was arbitrary or capricious in its determination. Here the Board, after a careful review of the position of the parties, as joined on the property, finds that the Carrier's actions were not arbitrary or capricious. Therefore, we must deny the claim.

### AWARD

Claim denied.

### 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 25th day of July 1996.