

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 33622

Docket No. MW-32348

99-3-95-3-180

The Third Division consisted of the regular members and in addition Referee Martin H. Malin when award was rendered.

(Brotherhood of Maintenance of Way Employes

PARTIES TO DISPUTE: (

Consolidated Rail Corporation

STATEMENT OF CLAIM:

"Claim on behalf of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed to permit Machine Operator A. C. Allis to displace junior employe K. Watson on the Class 2 Machine Operator's position headquartered at Gang Mills, New York on August 9, 1993 (System Docket MW-3285).**
- (2) As a consequence of the violation referred to in Part (1) above, Mr. A. C. Allis shall be compensated (a) at the Class 2 Machine Operator's rate for all wage loss suffered, (b) for sixty (60) miles per day at the applicable mileage rate and (c) for the travel time expended [two (2) hours] each day the Claimant traveled to his assignment at Hornell as a result of his being improperly denied the displacement at Gang Mills, New York beginning August 9, 1993 and continuing until the violation ceases."**

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 were given due notice of hearing thereon.

On August 9, 1993, the Claimant attempted to displace a junior employee from a Machine Operator Class 2 position operating a backhoe. The Claimant did not have a Federal Highway Administration (FHWA) certification, also known on the property as a ConRail certification. Because FHWA certification was one of the qualifications for the position, the Carrier refused to allow the Claimant to displace the junior employee.

The Carrier contends that it properly denied the Claimant's request to displace because the Claimant was not qualified for the position. The Organization argues, however, that the Carrier was responsible for certifying the Claimant and that the Carrier may not rely on the Claimant's lack of FHWA certification when that resulted from the Carrier's own inaction.

We have reviewed the record carefully. Apart from naked assertions, we find no evidence regarding the steps that the Claimant took to become FHWA certified. We also find no evidence of what the Carrier did, or failed to do, that inhibited the Claimant from becoming FHWA certified. The Organization's assertions that the Carrier prevented the Claimant from becoming FHWA certified are not evidence. Absent evidence to support the assertions, 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 16th day of November 1999.