

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36262
Docket No. MW-36541
02-3-01-3-36**

The Third Division consisted of the regular members and in addition Referee Nancy Faircloth Eischen when award was rendered.

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company (former Southern
(Pacific Transportation Company (Western Lines))**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned junior Track Sub-department employee A. Campa to a Class 19(a) Truck Driver's position on Gang 7397 headquartered at El Paso, Texas on November 12, 1999, instead of assigning Mr. J. T. Marquez who was senior and made applicable for the position (Carrier's File 1217567 SPW).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. T. Marquez shall be assigned to the position in question, he shall be paid for all time lost and he shall be assigned a seniority date of the original date of assignment for the Class 19(a) position in ranking order immediately above Mr. Campa.”**

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.

Claimant J. T. Marquez entered the service of the Southern Pacific Transportation Company on May 19, 1981 and subsequently established seniority within various classes of the Track Subdepartment on the Eastern Seniority District of the Tucson Division. Particularly pertinent to this case, the Claimant did not hold seniority as a Class 19(a) Truck Operator at the time the instant dispute arose in the Fall of 1999, having previously relinquished his Class 19(a) seniority under circumstances related in the Organization's March 22, 2000 letter of appeal.

At the time the instant dispute arose, the Claimant was assigned and working as a Curve Lubricator Maintainer, with headquarters at the El Paso Yard in El Paso, Texas. His assigned workweek was Monday through Friday, with Saturday and Sunday designated as assigned rest days. The Carrier advertised by bulletin a Class 19(a) Truck Operator position on Gang 7397 headquartered at El Paso, Texas. On November 14, 1999, the Claimant properly presented his application, via voice mail, for the subject Class 19(a) Truck Operator position. The other applicant for the position was Campa, an employee whose September 15, 1997 seniority date in the Maintenance of Way Subdepartment made him junior to the Claimant. After reviewing the applications in comparison with the bulletin requirements for the job, the Carrier awarded the position to the junior employee.

In this claim, the Organization and the Claimant assert that his seniority rights were transgressed when he was not awarded the position. Careful review of the facts leaves the Board unpersuaded that the Claimant's rights under Rule 5 and/or 8 were violated. It is not disputed that one of the published requisites for the position, as set forth in the bulletin, was current DOT/CDL accreditation. Neither applicant held Class 19(a) Truck Operator seniority and each apparently had colorable fitness and ability but, unlike the Claimant, junior employee Campa possessed DOT/CDL certification at the time of the bulletin and assignment of the Truck Driver's position on Gang 7397. We conclude that this claim must be denied, for reasons set forth with more particularity in a similar claim that was denied by the Board in Third Division Award 35310.

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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 28th day of October 2002.