

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43554  
Docket No. MW-44838  
19-3-NRAB-00003-140396**

**The Third Division consisted of the regular members and in addition Referee Kathryn A. VanDagens when award was rendered.**

**(Brotherhood of Maintenance of Way Employees Division -  
(IBT Rail Conference**

**PARTIES TO DISPUTE: (**

**(Indiana Harbor Belt Railroad Company**

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

- (1) The Agreement was violated when the Carrier failed to assign Mr. M. Ramirez to the position of B&B mechanic advertised by Bulletin No. G-11 and instead assigned junior employee A. Serrano thereto beginning on July 24, 2013 and continuing.**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant M. Ramirez shall ‘... be compensated all straight time and overtime hours worked by A. Serrano beginning on July 24, 2013 and continuing at the appropriate B&B Mechanic’s straight time and overtime rates of pay. We would also request that the Claimant immediately be awarded the B&B Mechanic’s position and that an appropriate period of time be afforded to the Claimant in order to obtain the necessary CDL License. \*\*\*”**

**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.**

**The Claimant established and holds seniority in the trackman classification within the Track Subdepartment of the Carrier's Maintenance of Way Structures Department. According to the Organization's submission, the Carrier posted a vacancy for a mechanic position on Gang 51 on July 16, 2013, which required that the successful applicant possess a Class B/CDL driver's license. The Claimant unsuccessfully bid on the vacancy, which was awarded to A. Serrano, a junior employee.**

**The Organization presented a claim on July 29, 2013, which was denied by the Carrier on September 27, 2013. The Organization progressed the claim and it was denied up to the highest level. When the parties were unable to resolve the claim on property, it was presented to the Board for resolution. This information is gleaned from the Organization's ex parte submission.**

**However, while the Organization's claim was properly made before the Board and the Carrier was duly notified, it failed to present a submission in response to the claim. As a result, the positions and assertions of the Organization are unchallenged on the record before the Board. In such a case, the Board has no recourse but to sustain the claim as presented. Third Division Award 35580. This decision is based solely on the procedural defect and should not be construed as precedent regarding the merits of the dispute presented.**

**AWARD**

**Claim sustained.**

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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 27th day of March 2019.**