

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45239
Docket No. MW-46494
24-3-NRAB-00003-210241**

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

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

PARTIES TO DISPUTE: (
(BNSF Railway Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier failed and refused to grant Mr. K. Kennard a Group 7 Class 1 Machine Operator seniority date on September 23, 2019 (System File 0518-SL2-1922/14-20-0029 BNS).

(2) As a consequence of the violation referred to in Part (1) above, Claimant K. Kennard shall now be granted a Group 7 Class 1 Machine Operator date of September 23, 2019.”

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 Organization filed the instant claim on behalf of Claimant alleging that the Carrier violated the Agreement when it failed and refused to grant Mr. K. Kennard a Group 7 Class 1 Machine Operator seniority date on September 23, 2019.

The Claimant was awarded a Group 7 Class 1 Machine Operator position via bulletin with a September 23, 2019, report date. The Carrier held Claimant in his position as a Trackman/Truck Driver until September 29, 2019. On September 30, 2019, Claimant was awarded another Trackman/Truck Driver position with a September 30, 2019, report date.

The Claimant filed a pay shortage form with the Carrier requesting payment for the difference in pay for the time he was held in his former truck driver position and his newly assigned Group 7 Class 1 Machine Operator position. The Carrier approved the Claimant's request for compensation. Claimant was paid as a Group 7 Class 1 Machine Operator on November 1, 2019. Nonetheless, the Carrier refused to grant the Claimant a Group 7 Class 1 Machine Operator September 23, 2019, seniority date.

The Organization relies on Rule 2 of the Agreement. Rule 2 of the Agreement provides that:

Seniority in each class and in any lower classes under each group shall be established at the time the employee's pay starts in the class....

The Organization submits that since Claimant was paid at the Group 7 Class 1 Machine Operator rate of pay, his seniority date in that Group and Class should start on the date of assignment, September 23, 2019.

Based on the evidence in the record that supports that Claimant was paid at the Group 7 Class 1 Machine Operator rate of pay, his seniority date, pursuant to Rule 2 of the Agreement is September 23, 2019. The Board acknowledges that it may have rendered a different outcome if the payroll record had not been submitted into evidence.

AWARD

Claim sustained in accordance with the Findings.

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 28th day of March 2024.