

PUBLIC LAW BOARD NO. 2774

Award No. 51

Case No. 93

PARTIES  
TO  
DISPUTE

Brotherhood of Maintenance of Way Employees  
and  
Atchison, Topeka and Santa Fe Railway Company

STATEMENT  
OF CLAIM

- "1. Claim of the System Committee or the Brotherhood that the Agreement was violated when the position of Miscellaneous Machine Operator (Pittsburgh Section ) has advertised by bulletin on January 3, 1980 was awarded to an applicant junior to Trackman D. R. Lopez (System File 190-13D3-811/11-160-300-47).
2. Claimant D. R. Lopez shall be allowed the difference between what he earned as a Trackman and what he should have earned as a Miscellaneous Machine Operator beginning February 11, 1980 and continuing until the Claimant is assigned to the aforesaid position."

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

Claimant herein was employed by Carrier in 1955 and thus had some 26 years of seniority as of the events involved in this dispute. The employee assigned to the position in this dispute Mr. Pinkney had 10 years of seniority in the same classification as a Trackman. The record indicates that on January 3, 1980, a new position of Miscellaneous Machine Operator was established on Carrier's Pittsburgh Section. As the

most senior employee qualified to perform the position, Claimant was assigned temporarily to fill the job pending bulletining the assignment on a permanent basis. Position was bulletined from January 3, 1980, until January 14, 1980, and Claimant and Mr. Pinkney applied for the position in question. Carrier assigned Mr. Pinkney to the position thus triggering the dispute herein.

The record indicates that Claimant Lopez had worked the Miscellaneous Machine Operator position from January 3rd to January 26, 1980, at which time Mr. Pinkney took over the position.

Article II, Section 4-a-1 of the Agreement provides as follows:

"Operators of miscellaneous roadway machines, including such firemen and helpers as may be assigned, not listed in Groups 5 and 7, Section 2 of this Article II, will be selected from the ranks of the senior available qualified maintenance of way and B. & B. employees on the operating division, who have written applications for such service on file with the Superintendent, irrespective of group or class in which they hold seniority under this Agreement. Employees so used will not establish seniority as machine operators and may be used on other seniority districts than the one on which they hold seniority under this Agreement. In readjustments of force of machine operators due to force reduction, the senior employees qualified to perform the work with the machines which are to be retained in service, irrespective of group or class in which the employee's seniority is held, will so far as possible, if they so desire, be retained as machine operators. Any employees used as machine operators may, when their use as such is discontinued, return to their former status without loss of seniority rights in their class. (See Appendix No. 5)"

The sole issue involved in this dispute is whether indeed Claimant possessed the requisite qualifications to be considered for the position involved. Had he those qualifications there is no question but that his seniority entitled him to the position. According to the Carrier, Operators of Miscellaneous Roadway Machinery must have a written application for such service on file with the Superintendent in order to be selected for any openings. Claimant Lopez did not submit a written application to the Superintendent for such service and none appeared on file. Furthermore, according to the Carrier, in order to qualify for such a position, it is necessary for an applicant to pass a closed-book written examination on the rules, and also to demonstrate ability on the particular machines. Although no questions raised with respect to Claimant's ability to operate the equipment he had not passed the required written examination, according to the Carrier. The record indicates that Claimant was given a "open-book" examination with respect to the Book of Rules by Road Master Lawhead on January 21, 1980, which he passed. Furthermore, it is clear from the record that Carrier had changed its procedures with respect to Book of Rules examinations in 1978 and thereafter gave only "closed-book" examinations. There is no evidence with respect to the dissemination of such information to employees. Basically Carrier's position was that it had no indication whatsoever from Claimant that he was interested in working as a Machine Operator since he had no letter on file with the Superintendent. Furthermore, even if he was interested he had not passed the requisite examination

in order to be considered qualified for the position. On the other hand, the Organization's position is that Claimant was clearly qualified for the position from every point of view including experience and also, of course, had significantly more seniority than the employee who was assigned to the job. Furthermore, Carrier having administered the oral Book of Rules examination to Claimant indicated by that action that indeed he was qualified in every respect for the position. The Organization also contends that Carrier obviously knew of Claimant's interest, by virtue of the fact that he filed a bid for the position.

By a letter dated April 3, 1980, Carrier wrote to Claimant as follows:

"Referring to your letter of March 27, 1980, concerning your failure to be promoted to Machine Operator at Pittsburg to handle the Compressor.

Under the terms of the Agreement a letter from an applicant requesting rights to be promoted to a Machine Operator must be received in the Superintendent's office and will be put on file. To date, there is no record of receipt of a letter from you in this office making such a request. Since this job at Pittsburg was a newly established position, it was put up for bid according to the Agreement for qualified Machine Operators, and was subsequently bid in by Pat Pinkney who was an already established Machine Operator and had been working on various gangs all over the Division.

For the record, your corrected Form 1690-D, Questionnaire on the Book of Rules, was mailed to this office to be included with your PR file. However, in order to qualify for a Machine Operator position it is now, and has been

"since December 1, 1978, by the General Manager's instructions, necessary for an applicant to pass a closed-book Book of Rules examination, after which he would then be considered for Machine Operator, and must qualify himself on the machine which he requests. It is regrettable that the proper instructions were not furnished to you. However, since you had not passed the required written examination at the time the position was established, nor had you made written application for Machine Operator position as specified in Appendix No. 5 of Maintenance of way Agreement, you could not have been considered.

If you will get together with Roadmaster Lawhead and make the arrangements to pass the written examination on Form 1690-DD, and forward a letter of request to this office, we will be happy to give you consideration for a Machine Operator's position.

It must be understood that this office reserves the right to determine whether a man can qualify for position of Machine Operator. However, you will be given fair and impartial consideration."

From the entire record of this dispute it appears there was considerable confusion with respect to the filling of the particular position. It is apparent that until the letter dated April 3, 1980, was received by Claimant, he was not formally put on notice as to the reasons for the appointment of a less senior man to the position and what steps he had to take in order to qualify for such position. This was particularly regrettable, in view of his lengthy service with Carrier and his obvious qualifications with respect to operating the equipment in question. Also, it is apparent from that same letter (supra) that Carrier indicated that it was regrettable that he did not know of the particular requirements

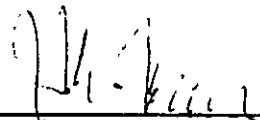
The Board concludes that under the circumstances indicated above, there was apparently a lack of notice of requirements to Claimant which requires redress. Thus, he will receive pay for the difference in compensation of the positions of Trackman as distinct from Machine Operator for the period from February 11 until April 4, 1980. It is also noted, however, that Claimant had some responsibility to attempt to fulfill the obligations set forth by Carrier with respect to application and qualification for the particular job. Thus, the Carrier's liability in this regard ceases upon his receipt of the letter dated April 3, 1980.

#### AWARD

Claim sustained in part; Claimant shall be allowed the difference between what he earned as a Trackman and what he would have earned as a Miscellaneous Machine Operator beginning February 11, 1980 and continuing until April 4, 1980. In other respects the claim is denied.

#### ORDER

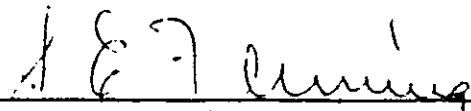
Carrier will comply with the Award herein within thirty days from the date hereof.



I. M. Lieberman, Neutral Chairman



G. M. Garmon, Carrier Member



S. E. Fleming, Employee Member

February 8, 1983  
Chicago, IL