

PUBLIC LAW BOARD NO. 2960

AWARD NO. 127  
CASE NO. 159

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees  
and  
Chicago & North Western Transportation Company

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it erroneously assigned Class B. Machine Operator Nelson to a Class A Tie Injector position on May 6, 1984 instead of Machine Operator R. D. Gonzales.

(2) Claimant Gonzales shall receive Class A Machine Operator seniority as of May 6, 1984, and also be compensated for all additional hours worked by Machine Operator Nelson from May 6, 1984 until Claimant is placed on the Tie Injector.

OPINION OF THE BOARD

This Board, upon the whole record and all of the evidence, finds and holds that the Employee and Carrier involved in this dispute are respectively Employee and Carrier within the meaning of the Railway Labor Act, as amended, and that the Board has jurisdiction over the dispute involved herein.

The Claimant and Machine Operator Nelson were Class B Machine Operators, Nelson being the senior employee. Prior to May 6, 1984, the Carrier bulletined vacancies on Tie Gang 3119 for a Class B Spiker and on Tie Gang 3120 for a Class A Tie

Injector Operator. The Employees submitted multiple bids listing in order the jobs of their preference. Nelson's 8th choice was the spiker position and the Class A Tie Injector position was his 23rd choice. The Claimant had also submitted a bid for the Injector position. However, the Tie Injector was initially assigned to Employee Wawryk. Consequently, Nelson was given the Spiker position.

All was well until it was subsequently learned that Mr. Wawryk had earlier been disqualified from the Tie Injector, and thus, it was agreed with the Local Chairman that he would be removed from the job. It was determined that there had been no Class A bidders for the job so under the rules employees with Class B seniority were considered. Nelson was contacted and agreed to take the Injector position.

As a result, the Claimant filed a claim contending essentially that since Nelson had already been awarded the Spiker job for which he had higher preference than the Injector job, he should be required to stay on that job.

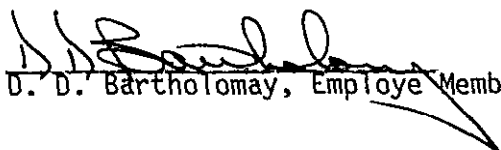
It is noted that strictly speaking the rules do not apply to this rather unusual set of circumstances. Accordingly, the rule of reason should prevail. It is the opinion of the Board that after the Wawryk bid was voided it was not unreasonable to, in effect, void the previous order of preference and start anew. Given this and given the fact that Nelson is senior to the Claimant, the Board is not convinced the claim should be sustained.

AWARD:

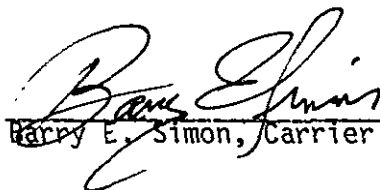
The Claim is denied.



Gil Vernon, Chairman



U. D. Bartholomay, Employee Member



Harry E. Simon, Carrier Member

Dated:

Sept 19, 1957