

PUBLIC LAW BOARD NO. 2960

AWARD NO. ~~113~~ 166  
CASE NO. 267

**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 assigned a junior employee to a bulletined machine operator's position and failed to assign Machine Operator D. A. Bochmann who was senior and qualified for the position (Organization File 4LF-2254T; Carrier File 81-88-151).
- (2) Machine Operator Bochmann shall now be assigned to the position he was held off and compensated for the differential between the trackman's rate of pay and the applicable 902 Machine Operator's rate of pay for all hours rendered from June 25, 1988, and continuing."

**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.

On June 10, 1988, the Central Division released T-4 Advertisement Notice listing Bulletin No. 88-388 advertising the position of a 902 Common Class Machine Operator to be

headquartered at the Boone, Iowa, panel site. The Claimant made written application for and was subsequently assigned the position per Assignment Notice dated June 23, 1988, with a stated effective date of Saturday, June 25, 1988. On June 29, 1988, Correction Notice No. 0245 was released assigning the junior employee to Bulletin No. 88-388.

A claim was then filed on behalf of the Claimant. It was denied by the Division Manager because the Claimant did not possess a valid driver's license and, therefore, was not viewed as qualified. In its appeal the Organization made several material assertions including (1) that the machine in question (speed swing) worked almost exclusively in the yard and was not required to operate on roads, (2) that the operation of the equipment on a public road did not require a driver's license, and (3) that the Claimant had been utilized on the speed swing after the bulletin to fill in for the incumbent. The Carrier's defenses at this point in time of the appeal did not change.

At the Board, the Claimant acknowledged that a driver's license was not required to operate the speed swing on a public road. Instead, they said it was a test or requirement so the Carrier would be assured the employee could operate the vehicle safely. Therefore, the Claimant was not the senior qualified applicant.

Any persuasive appeal in the Carrier's argument is voided by the fact that the Claimant was assigned to operate this machinery after the junior employee was awarded the job. It is extremely difficult to understand why the Claimant wasn't qualified at the time the final bulletin was issued but was qualified when the Carrier needed a replacement for the junior employee.

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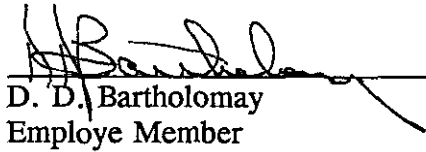
AWARD NO. <sup>166</sup>~~16~~

**AWARD:**

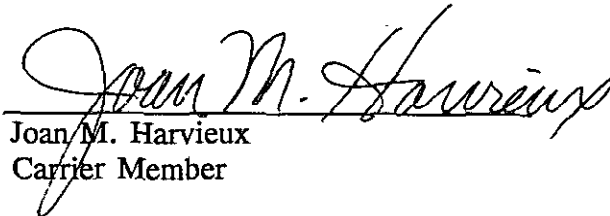
The claim is sustained.



Gil Vernon, Chairman



D. D. Bartholomay  
Employee Member



Joan M. Harvieux  
Carrier Member

Dated: 7-25-91