NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4370

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

and

BURLINGTON NORTHERN RAILROAD COMPANY

AWARD NO. 37 Case No. 37

STATEMENT OF CLAIM

- 1. The Carrier violated the current Agreement when Mr. Ernest V. Sanchez was not allowed to exercise seniority on Carrier's truck assigned to extra steel gang RP-22 on the Fort Worth and Denver Seniority District on July 9, 1990.
- 2. Claimant be compensated for all wage loss suffered and any overtime deprived of in accordance with, but not restricted to R-21 Memo of Agreement, dated October 4, 1972 and continuing until violation ceases.

FINDINGS

In this dispute, there is a contention that the Carrier failed to reply to the initial claim within the time requirements of Rule 27. The Carrier denies such failure, providing a file copy of a letter allegedly sent to the Organization in timely fashion.

This procedural matter need not be resolved, however. The Claimant sought to displace on a position as Truck Driver. It is clear that the Claimant was not qualified as a driver under

Department of Transportation standards, a necessary prerequisite to the position. Simply giving the Claimant a physical examination, as mentioned by the Organization, would not be sufficient to qualify the Claimant as a truck driver. Thus, the assignment would be improper in any case.

AWARD

Claim denied.

HERBERT L. MARX, Jr., Neutral Referee

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NEW YORK, NY

DATED:

JUL 27 1000