

PUBLIC LAW BOARD NO. 6301

**AWARD NO. 2
CASE NO. 2**

**PARTIES TO
THE DISPUTE:**

Brotherhood of Maintenance of Way Employees
and
Kansas City Southern Railway Company
(former SouthRail Corporation)

ARBITRATOR: Gerald E. Wallin

DECISION: Claim sustained

DATE: January 15, 2001

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed and refused to allow Mr. E. Brooks a heavy machine operator seniority date of July 10, 1995 [Carrier's File 13.31-503(2) SRL].
- (2) As a consequence of the violation referred to in Part (1) above, the Carrier shall allow Mr. E. Brooks a heavy machine operator seniority date of July 10, 1995 on the applicable seniority roster."

FINDINGS OF THE BOARD:

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.

Bulletin No. 222, dated July 10, 1995, awarded Claimant the position of Heavy Machine Operator (Ohio Crane). Before completing thirty working days in the position, however, Claimant was displaced by another employee.

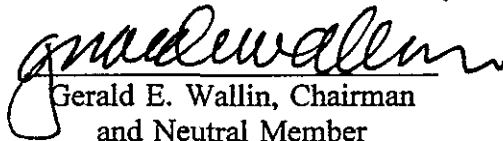
This Claim arose as a roster protest when the 1996 seniority roster did not contain Claimant's name with a seniority date of July 10, 1995.

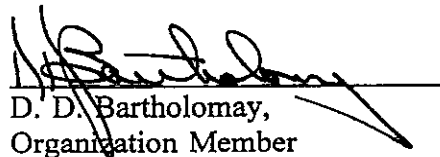
Although the record does not establish precisely how long Claimant worked in the Heavy

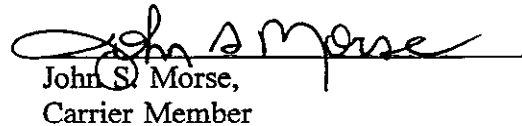
Machine Operator position prior to being displaced, the Organization did assert on the property that Claimant had "... established seniority in that group as of that date when he assumed the position at the first available opportunity in accordance with Rule 12 ..." Carrier did not refute the assertion that Claimant had assumed the position at the first available opportunity. Instead, it explained its refusal to include Claimant on the 1996 seniority list by stating that Claimant "... did not work the Machine Operator position thirty days prior to being displaced ..."

Under the circumstances, this dispute is controlled by the same rationale we expressed in Award No. 1. Accordingly, we must sustain this Claim.

AWARD: The Claim is sustained.


Gerald E. Wallin, Chairman
and Neutral Member


D. D. Bartholomay,
Organization Member


John S. Morse,
Carrier Member