

PUBLIC LAW BOARD NO. 1837

Award No. 99

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
NORFOLK AND WESTERN RAILWAY COMPANY

Statement of Claim:

1. The Carrier violated the Agreement when it failed to properly post Advertisement Bulletin FTW-730 dated September 7, 1992 on the Lake Division (Chicago/Michigan City District) (Carrier's File MW-FTW-93-16).
2. The Agreement was further violated when the Carrier assigned C. M. Williams to the Hoisting Engineer Chicago/Michigan City Seniority Roster No. N08800 dated January 1, 1993.
3. As a consequence of the violation in Part 1 above, the Carrier shall re-advertise, in accordance with the provisions of the Agreement, the position of hoisting engineer (Advertisement Bulletin FTW-730).
4. As a consequence of the violation in Part 2 above, the Carrier shall remove C. M. Williams from the Hoisting Engineer Chicago/Michigan City District Seniority Roster No. N08800.

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

This Award is based on the facts and circumstances of this particular case and shall not serve as a precedent in any other case.


AWARD

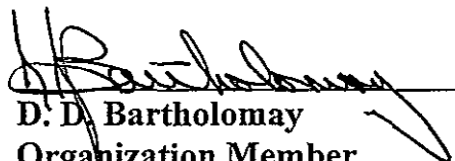
This Board has reviewed the record in this case and we find that the Organization has failed to meet its burden of proof that the Carrier violated the Agreement. The Organization has failed to prove that the listing of C. M. Williams on the hoisting engineer roster was contrary to any rule or provision of the Agreement.


It is fundamental that in cases of this kind the Organization bears the burden of proof of showing that the Carrier acted in violation of the Agreement. In this case, the Organization has failed in that burden. Therefore, the claim must be denied.

AWARD:

Claim denied.



PETER R. MEYERS
Neutral Member

D. D. Bartholomay
Organization Member

E. N. Jacobs, Jr.
Carrier Member

Issued at Chicago, IL on January 27, 1998