

PUBLIC LAW BOARD NO. 2960

AWARD NO. 129
CASE NO. 160

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 their Agreement when it removed Machine Operator R. D. Zink from the Mark III Tamper and assigned it to Machine Operator Wawryk. [Organization File 3T-4721; Carrier File 81-84-213]
- (2) Claimant Zink shall be given Class "A" seniority as of April 30, 1984; and, shall be compensated the differential in rate of pay received and the Mark III Tamper rate of pay, and any differential in hours of service rendered by the Mark III Tamper Operator.

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 case is based on the same circumstances as those which generated the claim considered by this Board in case No.

159/Award 127. The facts in that case were set forth as follows in the decision:

"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."

In this case, the Claimant is the employee whom Wawryk displaced after his removal from the Tie Injector. After his removal, the Carrier reviewed the Claimant's original bid preferences and placed him on the Class A Mark III Tamper. He was the senior bidder for this position based upon his Class B Machine Operator rights.

The Claimant, who was occupying this position at the time, had also obtained the position based upon his Class B Machine Operator rights. After being removed from the Mark III Tamper, Claimant was no longer able to hold a Class A machine position. Consequently, he did not receive Class A seniority. The

Claim was presented on behalf of Claimant for a Class A seniority date of April 30, 1984, as well as lost earnings.

Our reaction to this case is much the same as it was to Case No. 159. The rules don't strictly apply when an employee is removed from a position because it was mistakingly believed he held seniority to the position. We concluded then, as we do now, it is reasonable for the Carrier in the face of the error to revert to the status quo or, in other words, put-Humpty-Dumpty-back together-again to the best extent possible.

As it related to Mr. Wawryk it was reasonable to place him where he would have been but for the mistake. This necessarily meant that the Claimant was displaced. It is unfortunate that he could not hold any other Class A job. However, the fact that an error was made with respect to Wawryk does not entitle the Claimant to Class A seniority or any seniority preference over Wawryk. The Claimant is not entitled to any windfall or to be in a better position than if the mistake had not been made.

AWARD:

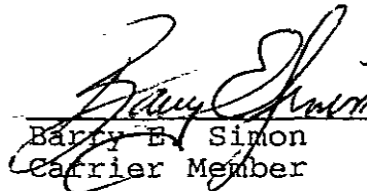
The Claim is denied.



Gil Vernon, Chairman



D. D. Bartholomay
Employee Member



Barry E. Simon
Carrier Member

Dated: July 6, 1984