

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4370

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

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.

F I N D I N G S

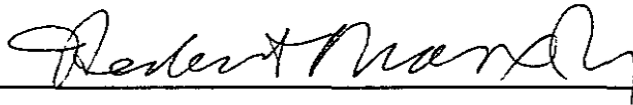
In this dispute, there is a contention that the Carrier failed to reply to the initial claim within the time requirements of Rule 27. The Carrier denies such failure, providing a file copy of a letter allegedly sent to the Organization in timely fashion.

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.

A W A R D

Claim denied.



HERBERT L. MARX, Jr., Neutral Referee

NEW YORK, NY

DATED:

JUL 27 1960