

**SPECIAL BOARD OF ADJUSTMENT NO. 1048**

**AWARD NO. 135**

Parties to Dispute:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**AND**

**WHEELERSBURG TERMINAL, LLC**

Statement of Claim:

Seniority protest on behalf of R. E. Stiltner that he be placed ahead of employees F. Clark, Jr., M. R. Campbell, and M. L. Knight on the Wheelersburg Terminal Equipment Operators Seniority Roster with a seniority date of December 27, 1990 and rank of 0005.

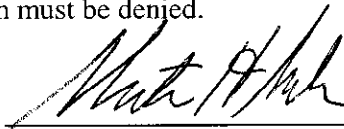
(Carrier File CW-MW-6-115)

Upon the whole record and all 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.


**AWARD**

After thoroughly reviewing and considering the record and the parties' presentations, the Board finds that the claim should be disposed of as follows:

Claimant and three other employees were hired at the Wheelersburg Terminal as Equipment Operators on December 29, 1990, subject to the provisions of the November 2, 1990 Agreement. That Agreement did not contain a provision for ranking employees who began service on the same date. Consequently, Carrier exercised its management right and ranked the employees first by whether they had existing seniority with Carrier and then in alphabetical order. Such determination was a reasonable exercise of management's rights and will not be disturbed. Although a December 17, 1996, Agreement created the position of Equipment Operator Trainee and provided for ranking employees hired into that position on the same date according to their birth dates, the Agreement did not apply retroactively to incumbent Equipment Operators. Accordingly, Claimant's standing on the seniority roster remained governed by the 1990 Agreement and Carrier's exercise of its management right to rank employees who entered service on the same date and who had prior Norfolk Southern seniority in alphabetical order was reasonable. Therefore, the claim must be denied.

  
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M. H. Malin  
Chairman and Neutral Member

  
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D. D. Bartholomay  
Organization Member

  
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D. L. Kerby  
Carrier Member

Issued at Chicago, Illinois on October 19, 2004