

SPECIAL BOARD OF ADJUSTMENT NO. 280

Award No. 124
Case No. 203

PARTIES TO DISPUTE:

St. Louis - Southwestern Railway

and

Brotherhood of Maintenance of Way Employees

STATEMENT OF CLAIM:

- "I. Carrier violated the Maintenance of Way Agreement, especially but not limited to Rule 2-2, Rule 5-1(a), and Rule 5-5 when it assigned junior employee to position as scarifier inserter operator with disregard to seniority or senior employee on Advertisement No. 18-North, dated October 10, 1974.
- "II. Mr. M. J. Hunter be allowed difference in rate of pay of laborer - \$4.4267 per hour, and scarifier inserter operator rate of pay of \$887.73 per month from November 14, 1974 until date of assignment to scarifier."

FINDINGS:

A position of machine operator (scarifier inserter) was advertised. No applications were received by machine operators, and the position was awarded to a laborer junior to Claimant, a laborer who had also applied for the position.

In our Award No. 122, sustaining a similar claim, this Board held that Rule 5-1(a) was a "sufficient ability" seniority clause as opposed to a "relative ability" seniority clause, and that under Rule 5-1(a) Carrier has the burden of showing that Claimant's ability was not sufficient to perform the work.

An examination of the record compels the conclusion that Carrier based its decision not to award the job to Claimant on the fact that it felt the junior employee was better qualified. It cannot do so under the language of Rule 5-1(a).

Carrier's reliance on this Board's Award No. 121 and Third Division Award No. 21446 is misplaced. In both of these cases there was evidence in the record that Claimants did not have sufficient ability to perform the work.

AWARD

Claim sustained. Carrier is required to make payment within 30 days of this award.

M. Kumar
Neutral Member

C.B. Dwyer
Carrier Member

M.A. Christie
Organization Member

Sept 5, 1979
Date