

SPECIAL BOARD OF ADJUSTMENT NO. 541
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
AND
ERIE-LACKAWANNA RAILROAD COMPANY

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

"(1) The Carrier violated the Agreement when it refused to permit Mr. Howard A. Weibel to displace a junior employe on December 11, 1961.

"(2) Mr. Howard Weibel be reimbursed the exact amount of monetary loss suffered during the period of the violation referred to in Part (1) of this claim."

FINDINGS:

On the recommendation of its Chief Surgeon that Claimant lacked the necessary physical qualifications for the position of Division Motor Car Operator since he was without sight in one eye, Carrier denied Claimant the right to displace a junior employee in that position. There is no evidence that Claimant was singled out for unfair discriminatory treatment and in view of Carrier's potential liability for personal injuries and property damage, we cannot validly conclude that its action was arbitrary or capricious.

That Claimant sustained his eye injury on the job and may possess a fine driving record and New York operator's license is not material to the issues of the present case. Carrier's action was taken on the advice of competent medical authority and under the circumstances of this case, does not constitute a violation of the controlling agreement. The claim will be denied.

AWARD:

Claim denied.

Dated at New York, N. Y., this 25th day of August, 1964.

/s/ Harold M. Weston
HAROLD M. WESTON, REFEREE

/s/ Arthur J. Cunningham
ORGANIZATION MEMBER

/s/ R. A. Carroll
CARRIER MEMBER