

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 31655  
Docket No. MW-31033  
96-3-92-3-892

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

(Brotherhood of Maintenance of Way Employees  
PARTIES TO DISPUTE: (  
(Southern Pacific Transportation Company (Western Lines)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed and refused to afford Mr. B. L. Nestle seniority dates in various classes \* (listed below) on the 1991 Track Subdepartment Seniority Roster to which he was entitled (Carrier's File MofW 154-500 SPW).
- (2) As a consequence of the violation referred to in Part (1) above, the Carrier shall allow Mr. B. L. Nestle seniority dates, in the various classes of the Track Subdepartment, as claimed.

*	73	Track Laborer
	70A	Laborer Operator
	25	Truck Driver
	18E	Brush Cutter Operator
	21A	Truck Driver/Crane Operator
	5	Ballast Regulator Operator
	51A	Spike Driver (Dual) Operator
	11	Rail Heater Operator
	58	Friction Saw Operator
	52A	Spike Gauger Operator
	48	Rail Lifter Operator
	45	Crib Reducer Operator
	32A	Spike Puller (Dual)
	32	Spike Puller Operator
	19B	Fuel Truck
	19A	Truck Driver (Diesel)
	18	Util. Tractor (End Loader)
	17	Tractor-Bulldozer"

**FINDINGS:**

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

By order of Public Law Board No. 2439, Award 165, dated May 20, 1991, the Claimant was reinstated to the position of spike driver which he held prior to his dismissal in 1988 "with all rights unimpaired." In the claim filed on August 26, 1991, and throughout subsequent correspondence on the property, the Organization sought seniority in the listed classes as a "right" emanating from that Award. The Carrier's apparent failure to grant the requested classes of seniority was without explanation, and its contention that the parties had agreed to withdraw the claim was contested by the Organization.

The Board agrees with the assertion of both parties that new evidence and arguments raised in Submissions should not be considered, and we base our conclusion solely on the record submitted on the property. Third Division Awards 28092 and 26257. However, issues as to the Board's jurisdiction may be raised at any time. Third Division Awards 27575, 20832 and Second Division Award 11708. Unfortunately, the sparse facts included in the correspondence on the property do not permit the Board to make a decision on the merits in this case, and lead us to conclude that the Organization is seeking to have the Board interpret and force compliance with a prior Board award, which we have no jurisdiction to do. Interpretation No. 1 to Third Division Award 28269, Third Division Award 27575. In these circumstances, the claim must be dismissed.

**AWARD**

Claim dismissed.

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**ORDER**

This Board, after consideration of the dispute identified above, hereby orders than award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of Third Division

Dated at Chicago, Illinois, this 29th day of August 1996.