

The Third Division consisted of the regular members and in addition Referee Eckehard **Muessig** when award was rendered.

(Jordan **Budzevski**

PARTIES TO DISPUTE: (

(**Elgin, Joliet** and Eastern Railway Company

STATEMENT OF CLAIM:

"I am being discriminated against and my civil rights has been violated every (sic) since **Osceola** Johnson (80340) was brought over in the B & B Department from the track gang on the Affirmative Action Program. Firstly, my job as the oldest painter was given to O. Johnson. When lay-off time came, I held the position as shop painter (a higher paying job). That position was taken away from me and given to O. Johnson and I was laid off. Over the years I have been to the Union many times about this dispute with nothing being done. On June 1985 I filed a complaint against the Company with no result.

I would like to find out how I lost my job as painter and shop painter to O. Johnson from the Affirmative Action Program and not being given a **job**. What is the Seniority Modification Agreement and how was I displaced and lost my job because of it? How can C. **Homan**, Painter Foreman, do painter work? This is in violation of the contract.

If O. Johnson came over as a painter, how was he given my job as a shop painter and not allowed to exercise his rights on the Affirmative Action Program to a crane operator, carpenter, or pipe fitter? Why was I the only one to lose my job and be totally displaced?

My time claims were not allowed for O. Johnson working in my place as shop painter "or when C. **Homan** worked as painter when he is a protected employee as a foreman (Washington Job Agreement **2/7/1965**)."

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 employees 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.

The Board has carefully reviewed the record before it in the instant case. We find, based on this review, that the Claimant did not file his grievance in the manner required by the Railway Labor Act. Specifically, it was sent directly to the Board; it was not handled on the property in accordance with Section 3, First (1) of the Railway Labor Act. The Claim, therefore, is barred from consideration by the Board and will be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Decker - Executive Secretary

Dated at Chicago, Illinois, this 28th day of January 1988.