

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13264

Docket No. 13098

98-2-95-2-124

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

(International Association of Machinists and
(Aerospace Workers (District 19)

PARTIES TO DISPUTE: (

(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"DISPUTE - CLAIM OF EMPLOYEES

1. *The Consolidated Rail Corporation violated the Rules of the Controlling Agreement of May 1, 1979, and particularly Rule(s) 2-A-1 and 2-A-3, when Machinist H. Forest was denied an advertised position as a M of W Machinist in Conrail Seniority District '013C.'*
2. *Accordingly, the claimant is entitled to the payment as requested, \$6,038.00."*

FINDINGS:

The Second 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 were given due notice of hearing thereon.

The issue in this case is whether on October 15, 1991, the Carrier improperly denied the Claimant an opportunity to displace a Junior Machinist from a Repairman position on a CAT Tamper at the Carrier's Cleveland, Ohio facility.

Rule No. 2 Selection of Positions is controlling in this matter. It reads, in pertinent part, as follows:

"RULE NO. 2--SELECTION OF POSITIONS

2-A-1. (a) In the exercise of seniority, the senior employee shall, if sufficient ability is shown by trial, be given preference to positions desirable to them.

* * *

2-A-3. (a) 1. Employees awarded advertised positions for which they bid or applied or acquiring positions through displacement of junior employees, will be given full cooperation from supervisory forces and others in their efforts to qualify.

2. An employee failing to qualify for the position selected after having been given a fair opportunity to demonstrate his qualifications, will retain all prior seniority and will, within five (5) working days, return to his former position unless it has been abolished or permanently filled by a senior employee, in which event he may exercise seniority in accordance with Rule 3-C-3.

3. Other employees displaced in the application of this rule may exercise seniority in accordance with Rule 3-C-3.

(b) 1. When the installation of a basically improved type of new machinery or new work methods requiring new or additional skills necessitates the creation of a new position under the Agreement, the position shall be

advertised and filled in accordance with the provisions of Rule 2-A-1. When there is a large scale installation of new machinery or large installation of new work methods requiring new or additional skills which may involve a substantial loss of work as mechanics to senior employees, representatives of the Company and of the employees shall agree upon a training program.

2. If the senior bidder or applicant for such position is not qualified therefor, he shall be assigned as a trainee, and shall be paid the hourly rate of his former position during the training period. If his former position was that of a helper, he shall be paid at the minimum rate of mechanic.

3. Except as may otherwise be agreed upon, such as in the case of large scale installations, the terms 'new machinery' and 'new work methods' shall be considered as applicable only during the first year of operation at the point involved.

*** * ***

The evidence shows that the CAT Tamper has been in operation for six years. Therefore, it is not a piece of new equipment and does not involve "new work methods" pursuant to Rule 3-A-3(b). Thus, the only questions are whether the Claimant was qualified to operate the equipment and whether he was "given a fair opportunity to demonstrate his qualifications" as stated in Rule 2.

On October 15, 1991, a Carrier Supervisor tested the Claimant on some of the rudimentary procedures involving repair of the CAT Tamper. The Supervisor memorialized in a document what tasks he assigned to the Claimant to evaluate his qualifications. On the property, the Claimant did not refute the Supervisor's key conclusions. Also, he provided no evidence that he was not given a fair opportunity to demonstrate his qualifications.

It is well-established, absent contractual constraints, that the Carrier has the sole discretion to determine whether an employee qualifies to perform the work of a particular position, provided that this right is not exercised in an arbitrary, discriminatory or capricious fashion.

We find that the trial given the Claimant on October 15, 1991 met the Rule 2 requirements. Therefore, the claim must be denied.

AWARD

Claim denied.

ORDER

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

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

Dated at Chicago, Illinois, this 18th day of May 1998.