

Award No. 13615
Docket No. MW-13518

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Preston J. Moore, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when, on June 9, 1961, it failed and thereafter refused to assign a Matisa Tamper Assistant Operator to work with and assist the successful applicant for the position of Matisa Tamper Operator advertised in Circular No. 142 dated June 9, 1961.

(2) The Carrier be required to assign a Matisa Tamper Assistant Operator to work with and assist the afore-mentioned Matisa Tamper Operator.

EMPLOYEES' STATEMENT OF FACTS: On June 9, 1961, the Carrier issued Circular No. 142 which advertised a position of Matisa Tamper Operator in Gang No. 98, North End Seniority District. The Carrier did not advertise a Matisa Tamper Assistant Operator's position and, since the rules, practice and custom require that Matisa Tampers operated by the Carrier have an operator and an assistant operator assigned thereto, the subject claim was timely and properly presented and handled at all stages of appeal up to and including the Carrier's highest appellate officer.

The Agreement in effect between the two parties to this dispute dated May 1, 1960, together with supplements, amendments, and interpretations thereto is by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: The pertinent portions of Rule 5 read:

"The grade or rank sequence of employes in the track and bridge and building subdepartments shall be as shown below, the lowest number designating the highest rank and the highest number the lowest rank in the respective subdepartments:

5 (a) Track Subdepartment:

* * * * *

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The Matisa "Standard" tamper and the Matisa Model B-24 are practically identical machines. We respectfully refer this Division to the 8th Edition of the "RAILWAY TRACK AND STRUCTURES CYCLOPEDIA". At the top of page 202 is a photograph of a Model B-24 Matisa Tamper and at the top of page 203 is a photograph of a "Standard" model Matisa tamper. Particular attention is called to page 203, wherein it will be found that differences existing between the two models in no way affects the duties of the operator or the assistant operator. Surely, if the Model B-24 was easier and less complicated to operate, as the Carrier claims, the manufacturer would have stressed this point in its sales literature. In truth, the Model B-24 is a faster and more powerful machine with a new selective-depth feature which improves the performance and quality of the work while increasing the amount of work required to operate the machine. Inasmuch as the operator must perform certain specific functions in order to tamp each tie and proceed to the next, the work of the operator is appreciably increased in order to realize the full work potential of the machine and the need for an assistant increases with the work load of the operator.

The fact that the Carrier now owns and operates Model B-24 Matisa tampers is no justification for its failure to assign an assistant to each Matisa Tamper after it has contractually agreed to do so.

We respectfully request that our claim be allowed.

CARRIER'S STATEMENT OF FACTS: On June 9, 1961, the division engineer issued bulletin advertising position of Matisa Operator, Gang No. 98, Birmingham Division. He did not issue bulletin advertising position of Assistant Matisa Tamper Operator. Employees contend that a position of an Assistant Matisa Tamper Operator should also have been advertised.

POSITION OF CARRIER: Before the advent of the Model B-24 Matisa Tampers, operation of Tampers required the services of both an operator and an assistant, but with the arrival of the B-24 model the need of the assistant's services disappeared. An assistant is what the name implies—a helper, and since the operator could operate the machine by himself he did not need the helper. Therefore, such a position as assistant was not necessary when the bulletin was issued for the Matisa Tamper Operator on Gang No. 98. The fact that an assistant had been used on other Matisa Tampers, for which a rate of pay had been established, did not compel the creation of such an assignment when it was not needed. This same situation prevails in other departments over this carrier's entire system—that is, rates of pay are established but positions not filled, as in the case of clerks—unless they are needed.

When the organization handled this case on the property, it was their position that a rate of pay should have been negotiated for operators of the B-24 model. It is carrier's position that it was not necessary to negotiate this rate, for at the time this claim was filed such a rate had already been established for operators of Matisa Tampers (or similar machines) — \$452.11 per month for operators and \$433.65 for assistants.

In the circumstances, the claim of the employees is without merit and should be denied.

OPINION OF BOARD: The sole dispute herein is whether the Carrier should be required to bulletin a position. This Board has held in Awards 9553 and 11753 that it is without that authority. We follow the opinion expressed therein.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of May 1965.