



Award No. 17136

Docket No. MW-17683

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John B. Criswell, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYES**

ILLINOIS CENTRAL RAILROAD COMPANY

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

(1) The Carrier violated the Agreement when it assigned Section Laborer M. Anthony instead of Section Laborer Leroy Daily to a temporary position of Multiple Tamper Operator during the period of May 10 through June 10, 1966. (System Case Nos. 427 MofW/ C-41-T-66 and C-42-T-66)

(2) Section Laborer Leroy Daily be allowed pay for the difference between what he would have earned as a multiple tamper operator and what he earned as a section laborer during the period of May 10 through June 10, 1966, including all overtime and holiday pay.

EMPLOYEES' STATEMENT OF FACTS: On May 10, 1966, the Carrier placed a multiple tie tamper in service on the Chicago Division. Under date of April 28, 1966, the Carrier issued Bulletin No. 21 (closing date-- 12 o'clock noon on May 9, 1966) advertising a temporary position of Multiple Tie Tamper Operator (Group 3). The senior applicant (Group 3 machine operator) refused the advertised position to accept another position. Under date of May 24, 1966, the Carrier re-advertised the position by Bulletin No. 27, which closed at 12 o'clock noon on June 6, 1966. Again the senior applicant (Group 3 machine operator) refused the position to accept another position. Under date of June 15, 1966, the Carrier again re-advertised the position by Bulletin No. 30, which closed at 12 o'clock noon on June 27, 1966. The claimant, who had also submitted an application on Bulletins Nos. 21 and 27, applied for and was awarded the advertised position on the basis of his seniority as a section laborer (Group 1).

Pending assignment of the position by bulletin on June 28, 1966, the operation of the multiple tie tamper was assigned to junior Section Laborer M. Anthony from May 10 through June 10, 1966 and to the claimant from June 13 through June 27, 1966.

Even though the claimant, who was senior to Section Laborer Anthony, was available, qualified and had expressed a desire to fill the entire subject temporary vacancy, the Carrier refused to allow him to do so.

position but on June 7 it was awarded to Mr. A. Silva who was No. 14 on the seniority roster of Group Three Machine Operators (Company Exhibit A). Silva did not begin working on the position immediately and Anthony continued on the job.

On June 14, Bulletin No. 29 was posted advertising job number 3, another multiple tie tamper operators position working on the Chicago Terminal. On June 27, this position was awarded to Silva. He assumed that position immediately, consequently like Mr. McKinney, although he was the successful bidder on job number 1 he never actually worked on that position.

On June 15, it became apparent that Silva would be the senior bidder for job number 3. The company then posted bulletin No. 30 which again advertised for bids on job number 1, this time to fill the vacancy created by Silva's bidding in on job number 3. No employee holding seniority as Group Three Machine Operator bid on this bulletin. On July 6, 1966, the position was awarded to the claimant as senior bidder. On July 8, claimant first worked on that position as successful bidder and his seniority as a Group Three Machine Operator commenced on that date.

On June 1, and June 15, 1966, claim for the difference between the section laborer and machine operators rates were filed on claimants behalf. After handling on the property the claim was appealed to this Board on January 4, 1968. Copies of all pertinent correspondence are attached as Company's Exhibit B through L.

(Exhibits not reproduced)

OPINION OF BOARD: Section Laborer Leroy Daily claims that during the period of May 10 and June 10, 1966, he was the Senior Section Laborer, available for work, qualified and should have been assigned to a temporary position of multiple tamper operator.

Both the Carrier and Organization agree as to the right of a senior man to the work. They agree that the Claimant was available and qualified. They agree that the work was given a junior man.

The Carrier argues that the wishes of the Claimant were not made known, although both parties agree that the Claimant three times bid on the temporary position of multiple tamper operator for the Chicago Division, the first on May 3, 1966. On June 1 Carrier was appraised of Claimant's desires by letter.

This Board must conclude that the Claimant took reasonable action to make the Carrier's representative aware of his desire for this work and that because of his undisputed seniority he was so entitled. Therefore, the claim is sustained.

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

That the parties waived oral hearing;

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 has been violated.

A W A R D

Claim sustained.

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

**ATTEST: S. H. Schulty
Executive Secretary**

Dated at Chicago, Illinois, this 15th day of May 1969.