

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24081
Docket Number MW-24311

Tedford E. Schoonover, Referee

PARTIES TO DISPUTE: { **Brotherhood Of Maintenance of Way Employees**
{ **Seaboard Coast Line Railroad Company**

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

(1) The Agreement was violated when the Carrier failed and refused to allow Machine Operator C. F. Miller ten (10) days in which to qualify as a Class I Multiple Tamper Operator when his position as Class II Machine Operator was abolished at the close of work on February 29, 1980 (System File 37-SCL-80-108/12-8(80-33)G)

(2) Because of the aforesaid violation, the claimant shall be allowed the difference between what he earned as a helper and what he should have earned as a Class I Multiple Tamper Operator for five (5) days."

OPINION OF BOARD: This claim is substantially based on Section 8(b) of Rule 8 of the applicable labor agreement which provides as follows:

"(b) Successful bidders on the positions referred to in Paragraph (a) above, shall be allowed ten (10) working days in which to qualify at the prevailing rate of the position. Failing to qualify by the expiration of ten (10) working days, such employees shall return to his former position within five (5) working days, provided it is not then occupied by a senior employee account of force reduction, or the position has been abolished, in which event he will exercise his established seniority as provided in Rule 13, Section 3."

Developments on which this claim is based occurred between December 1979 and March 1980. On or about March 3, 1980, claimant was displaced by a senior employe from the job he was working and exercised his seniority over a junior employe assigned as operator of a Multiple Tamper Machine. There is no question of claimant's seniority permitting him to make the displacement. He worked the machine for the period March 3 through 7 when, based on a decision by his supervisors, he was removed from the position and told he was disqualified.

Prior to this occasion claimant had another testing period of the same Multiple Tamper Machine. He was the successful bidder and was assigned as operator effective December 18, 1979 and held the position until December-29, 1979, at which time he bid on another job without ever qualifying on the Machine Tamper Machine. In the opinion of his supervisors he had not qualified to operate the machine. According to their reports he was assisted by qualified operators

during the period but despite **this** assistance he left track areas improperly **tamped**, did not tamp joint ties and humped track at turn-out areas. It was also **evident that he was not versed in surfacing or lining curves.**

Because of their prior **experience** with the **claimant**, the supervisors discussed the operation of the **machine with him at the time** he exercised his seniority to operate machine on March 3, 1980 by exercise of **bumping rights**. During the five-day period March 3-7 inclusive he served as operator, the **machine was alternately broken down and imperative on three** of the **five days** in the period. During this period Carrier made efforts to assist claimant in qualifying in the operation by furnishing qualified personnel familiar with its operation. These included an assistant **foreman and two** helpers. After five days **supervision was convinced** he would not be able to **qualify in the ten-day period provided in Rule 8(b)** and he was therefore disqualified. He was paid at Class 1 for the five-day period as well as for the more than ten-days when he served as **Tamper Machine Operator during December, 1979.**

Literal reading of Rule 8(b) provides a mandatory 10-day trial period for successful bidders. It does not necessarily provide such a trial period for **employees** who place themselves on jobs through **bumping rights**. But decision on this claim does not rest on such narrow grounds. In the period of **some ten weeks from late December, 1979 to March 7, 1980**, claimant had received the **Class 1 rate of pay for well over 10 days while serving as Tamper Machine Operator**, and thus the requirements of Rule 8(b) were satisfied.

The Multiple Tamper Machine is an **extremely** technical piece of **equipment** and requires that the operator possess considerable skill and ability. The **claimant was not qualified as a result of his experience during December 1979 and he made no effort to become** qualified between that time and March 4 when he placed himself on the machine by exercise of seniority. It is also important to note he could have **placed himself** on the machine as helper as a step **toward learning** the job of operator. He did not do this.

Actually, when he **bumped** onto the operator job in **March 1980**, it was suggested to him that he place himself on the helper job which would give him an opportunity to become familiar with operation of the machine, the problems to look for, the **operation of the laser beam**. He declined to do this **and manifested** an attitude which indicated he was not so much interested in learning to **operate** the machine as **he was in** the higher rate of **pay** the operator job provided. According to the Carrier an experienced assistant **foreman** and two experienced helpers were assigned to assist the **claimant** in the operation of the **tamper** but **even with this help** it was clearly apparent that he would not be able to qualify as an operator.

Having given the **claimant** a ten-day trial period during December 1979, there is no **requirement in** the rule that he be accorded another 10-day trial **everytime** he exercises his seniority and places himself **on a machine**. Having **determined** his lack of **qualifications** in December the Carrier was not

obligated by the rule to keep him on the machine the full ten days during March **in view** of the **circumstances discussed herein**.

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

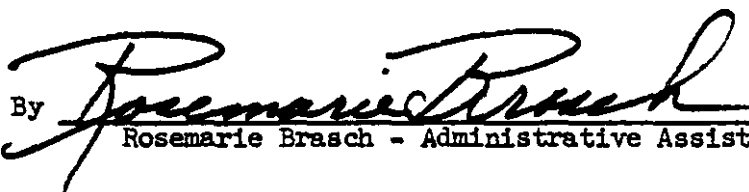
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 5th day of January 1983.