

NATIONAL RAILROAD **ADJUSTMENT** BOARD

**THIRD** DIVISION

Award Number 25437  
Docket Number MW-25313

**Herbert** L. Marx, Jr., Referee

PARTIES TO DISPUTE: ( (Brotherhood of Maintenance of Way **Employes**  
(The National Railroad Passenger Corporation (**Amtrak**) -  
( Northeast Corridor

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

(1) The Agreement was violated when Advertisement No. **74-NYDE-0681**, **EWB-A**, General Tamper, headquartered in **Millham**, Gang N-162 was awarded to an applicant junior to Machine Operator Will Wiley (System **Docket** 2891.

(2) 1a) The **position** of General Tamper operator on Gang M-162 headquarters in **Millham** shall be awarded to Mr. Will Wiley.

(b) Claimant Will Wiley shall be allowed time and one-half **EWB-A** rate minus straight time **EWB-A** rate, in addition to the compensation he has already received, for July 6, 7, 8, 9, 12, 13, 14, 15, 16, 19, 20, 21, 22, 23, 26, 27, 28, 29, 30, 1981 and **continuing** until **the** violation is terminated.

OPINION OF BOARD: Under the terms of the so-called **Tamper Operator Agreement** of May 21, 1979, successful applicants for the **positions** of operating specific production Tampers agreed to remain on such **"contracted"** **Tamper Operator** position for a maximum period of 24 calendar months. The Claimant was assigned such position, and signed an individual **agreement**, stating that he fully understood that he **wds required** to **remain on** **contracted Tamper Operator** position until July 15, 1981. According to the Carrier, such agreement, including individual Operators' obligations, were extended by agreement to run until **December** 31, 1981, although this extension is not determinative under the facts here.

On June 5, 1981 (before the expiration of the Claimant's original **"contract"**), a **Tamper** position **was** advertised and subsequently awarded on June 30, 1981 to an employee junior to Claimant. The Organization **argues** thdt the Claimant, who also bid on the advertised position, should **have** been entitled to move to the new position, because he **wds** senior to the employee who **wds** awarded the position.

The new position **wds** not, as the Carrier **points out**, one of the contracted positions under the **Tamper Operator Agreement**. On **this** basis, it is **clear** that the Claimant **was** not free (other than by **agreement** of the Carrier) to **move** off of his contracted position at the time the new position **wds** filled. To claim such right **would** be to defeat one of the obvious work stabilization purposes of the **Tamper Operator Agreement**. Thus, the **Claimant** **wds** precluded from such position at the time. The **fact** that the **same type** of **equipment** **was** involved and thdt it **was** work on a more desirable **work** schedule is not relevant, since such factors **are** not included in the **Tamper Operator Agreement**.

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:   
Nancy J. Lever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of April 1985.