

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31826
Docket No. MW-31304
96-3-93-3-273**

The Third Division consisted of the regular members and in addition Referee W. Gary Vause when award was rendered.

**(Brotherhood of Maintenance of Way Employes
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation**

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 Mr. D.J. Adams to displace Mr. H.L. Jackson as a Class 1 Machine Operator at La Porte, Indiana on January 14, 1991 (System Docket MW-2121).

(2) As a consequence of the violation referred to in Part (1) above, Claimant D.J. Adams shall be compensated, at the Class 1 Machine Operator's rate of pay, for all wage loss suffered with credits applied for benefits and vacation purposes."

FINDINGS:

The Third 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 Carrier advertised a Class I Machine Operator position at La Porte, Indiana. The position advertisement included the torsion beam tamper requirement. On January 9, 1991, H. L. Jackson exercised his seniority to the position. Claimant D. J. Adams, who holds greater seniority than H. L. Jackson as a Class I Machine Operator, attempted on January 14, 1991, to displace Jackson on the Class I position. During questioning about his qualifications and ability, Claimant admitted to a Carrier representative that he could not operate the torsion beam tamper. The Claimant was not allowed to displace Jackson, who was fully qualified for the position and held the position until January 25, 1991 when the job was abolished.

The issue in this case is whether the Carrier violated the Agreement when it assigned a junior employee to fill a bulletined position and denied the Claimant an opportunity to establish seniority as a Class I Machine Operator.

The Claimant asserted that he should have been allowed to make the displacement because he held greater seniority. Additionally, this Board is asked to consider the fact that Jackson never operated a torsion beam tamper during the time that he held the Class I Operator's position.

The Carrier argued that it properly disallowed the displacement because the Claimant was unqualified by his own admission. The Carrier asserts that the fact that Jackson did not operate a torsion beam tamper during the two weeks he occupied the position is not dispositive. The Carrier urges the Board to deny the instant claim for lack of proof.

Section 1 of Rule 3 regarding the selection of positions states: "In the assignment of employees to positions under this Agreement, qualifications being sufficient, seniority shall govern."

The determination of an employee's qualifications for position is for the Carrier to make. See Third Division Award 29482. The Carrier is not required by the Rules to look at seniority until it has employees who are qualified for the position. Because the Claimant admitted that he did not possess the current qualification on the Book of Rules, his qualifications were not sufficient to be considered for the position and there was no necessity for the Carrier to compare the seniority between Jackson and the Claimant.

Because the Organization has not met its burden of proof in this case, the claim must be denied.

Form 1
Page 3

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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 Third Division**

Dated at Chicago, Illinois, this 26th day of December 1996.