

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35991
Docket No. MW-33267
02-3-96-3-738**

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin when award was rendered.

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

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier improperly disqualified Mr. R. A. Airhart from the TR-10 Tie Inserter position on May 14, 1995 (System Docket MW-3902).
- (2) As a consequence of the aforesaid violation, the disqualification referred to in Part (1) above shall be removed from the Claimant's record.”

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 Claimant was a Class 2 Machine Operator who was assigned to operate a TR-10 Tie Inserter in the Spring of 1995. He had not been previously qualified on the machine. After operating it for approximately 30 days, the Carrier determined he would not qualify because he failed to attain proficiency in two respects: First, he was unable to achieve the average insertion rate of 270 ties per hour; second, his technique created many profile spots in the track structure, which caused additional work for the surfacing gang that followed the tie gang.

On the property, the Organization took exception to the Carrier's average insertion rate standard of 270 ties per hour. It did not, however, dispute that the Claimant's method of operating the TR-10 caused too many profile spots in the track structure.

It is well settled that the Carrier has the right to make determinations about employee qualifications, and the Board will not disturb those determinations without evidence that they were made arbitrarily or erroneously. Mere disagreement with the Carrier's determinations or assertions of impropriety without proof are not sufficient to warrant intervention by the Board.

On this record, the Organization challenged the rate insertion standard on the grounds that it was self-serving and had not been developed with the Organization's compliance. However, it produced no evidence in support of these assertions or that the Agreement required its compliance.

The Organization also attempted to show that the Claimant's production rate met daily expectations. This contention must be rejected because it did not take into account non-production time such as travel, set-up, waiting for passing trains, and similar kinds of lost time.

On this record, we find no proper basis for disturbing the Carrier's determination.

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 19th day of March, 2002.