

Award No. 11915
Docket No. MW-11034

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**THE NEW YORK, CHICAGO AND ST. LOUIS
RAILROAD COMPANY**

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

(1) The Carrier violated the effective Agreement when, in lieu of calling and using Electric 12-Tool Tie Tamper Operator Charles Grubb to operate an Electric 12-Tool Tie Tamper while in movement from Frankfort, Indiana to Ramsey, Illinois on August 25, 1957, it assigned the work to Maintenance of Way Equipment Maintainer Clarence Byers, who holds no seniority in the Electric 12-Tool Tie Tamper Operator's class.

(2) Electric 12-Tool Tie Tamper Operator Charles Grubb now be allowed fifteen and one-half hours' pay because of the violation referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: The Claimant, Mr. Charles Grubb, has established and holds seniority as an Electric 12-Tool Tie Tamper Operator as of September 9, 1952.

On August 13, 1957, Bulletin No. 63 was issued advertising three positions of Electric 12-Tool Tie Tamper Operator, with Saturdays and Sundays as designated rest days. On August 23, 1957, Appointment Notice No. 65 was issued awarding the three positions, one position being assigned to Paul Hoyt and one position to Claimant Grubb.

On Sunday, August 25, 1957, the Carrier had two of these Electric 12-Tool Tie Tamper machines and a ballast regulator moved from Frankfort, Indiana to Ramsey, Illinois. The three units of equipment were coupled together, with the ballast regulator in the center, and with all three units in operation to provide the necessary propulsion and braking power.

Mr. Paul Hoyt was called and used to operate the lead tamper; a ballast regulator operator and helper to operate the ballast regulator; and Maintenance of Way Equipment Maintainer Clarence Byers to operate the remaining tamper. Fifteen and one-half hours were consumed by the Maintenance

Claimant Grubb and this Carrier are bound by all of the rules of the agreement including Rules 3, 5, 14, 51, and 54, among others. This claim is inconsistent with those rules, is entirely without merit, and must be denied.

All that is contained herein is either known by or available to the Employees.

OPINION OF BOARD: On August 13, 1957, in anticipation of starting tie tamping operations on the Clover Leaf District, Carrier issued a bulletin advertising three positions of Electric 12-Tool Tie Tamper Operators. Charles Grubb responded and was accepted as one of the employees. Carrier arranged for the movement of two Electric 12-Tool Tie Tamper Machines and one Ballast Regulator from Frankfort, Indiana to a designated destination in preparation for the work to begin on August 26, 1957. To assist in the movement of one of the tie tamper machines, Carrier assigned a Maintenance of Way Equipment Maintainer, Clarence Byers.

The issue presented is whether or not Carrier improperly assigned the work to Maintenance of Way Equipment Maintainer Byers, who holds no seniority in the Electric 12-Tool Tie Tamper operators class.

Charles Grubb, who holds seniority in that class, contends that he should have been called for the work and claims monetary reparations for 15½ hours. Carrier takes the position that Claimant Grubb held a regular assignment as trackman on August 25, 1957 and could not claim work in another classification until he changed his status. Moreover, it asserts that under the rules Mr. Byers had a right to operate the tie tamper machine which was not used for work, but was employed in transit to the site of the work. Carrier also maintains that, in any event, Claimant is not entitled to payment because the rules of the Agreement expressly state that work not performed requires no compensation.

Since Carrier did not raise the question as to the availability and qualifications of Claimant during the handling of the dispute on the property level, this issue requires no consideration. We are of the opinion that the operation of the tie tamper from Frankfort to the new site was work which belongs in the Electric 12-Tool Tie Tamper class and should have been assigned to the employee with seniority rights in that classification. Mr. Byers, who was given the assignment of machine operator on his rest day, August 25, 1957, held a position as an equipment maintainer. Although he had no seniority rights as a machine operator, he was given preference over Claimant Grubb, who also was on his rest day, but did have seniority as a machine operator. We hold that Carrier's assignment of Mr. Byers as a machine operator instead of Mr. Grubb was a violation of Claimant's seniority rights. We further find that the purpose and intent of Rule 54, which Carrier cites, was not to apply to the situation in the instant case, for it would make ineffective and unenforceable the seniority rules of the Agreement. Claimant is therefore allowed 15½ hours' pay because of violation of the Agreement of the parties by Carrier.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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;

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That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement of the parties was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of November 1963.