

Award No. 18088
Docket No. MW-18578

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis X. Quinn, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
SEABOARD COAST LINE RAILROAD COMPANY

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

1. The Carrier violated the Agreement when it failed to allow Johnny Lovejoy ten (10) working days in which to qualify as operator of a Tie Saw-Remover as provided within Section 8(b) of Rule 8. (System file 12-8.)

2. Johnny Lovejoy be allowed the difference between what he would have received at the Tie Saw-Remover operator's rate and what he received at the trackman's rate of pay for seven (7) days because of the violation referred to within Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: On July 23, 1968 the Carrier issued Bulletin No. 10-3 wherein it advertised the permanent position of operator on a Tie Saw-Remover, a Class III machine which had been assigned to work with Extra Gang 9206. Such positions are bulletined to and filled by employees holding seniority within the Track Subdepartment in accordance with the provisions of Section 1 of Rule 5 and Section 8 of Rule 8 which, insofar as they are pertinent hereto, read:

"RULE 5 - SECTION 1

The following machines and other similar machines shall be considered as being in the Track Subdepartment, and positions of operators and helpers on these machines shall be filled from employees holding seniority in the Track Subdepartment as provided in Rule 8, Section 8:

* * * * *

Class III Machines

Ballast Cribber (Large)
Power Tamping Jack
Tie Cutter (Shear)
Tie Saw-Remover
Scarifier-Tie Insertor

OPINION OF BOARD: The essential facts are not in dispute. Claimant, a track laborer, bid for and was assigned to position of Tie Saw-Remover operator, Class III machine, and as the successful bidder was thereafter entitled to ten (10) working days in which to qualify under Rule 8, Section 8(b), which reads:

“(a) Except as provided for in NOTE below, positions of Track Machine Operators on the machines assigned to employees in Group A, Track Subdepartment, will be bulletined to employees holding seniority therein, and the bidder with the most seniority in Rank 4 will be assigned. If there is no bidder in such rank, then the position will be assigned to the bidder with the most seniority in Group A, Track Subdepartment.

(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 employee 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.

* * * * *

NOTE: When Class IV machines listed in Rule 5, Group A, Track Subdepartment, are to be operated in intermittent service by section forces, the position will not be advertised as required by Paragraph (a) of this Section 8 and the senior applicant on the force on which the machine is to be operated will be given the position and paid the rate applicable to the machine, as listed in Appendix A, for the time the machine is operated.”

Claimant was removed from the machine on the third day and returned to his former position.

The rule involved is a special rule on qualifying for machines as opposed to the general rule of promotion under Rule 12. This Board has adhered to the principle that special rules prevail over general rules.

The primary norm in the construction of contracts is that we must ascertain and give effect to the intention of the parties and that intention is to be deduced from the language employed. In construing a written contract, the words employed are given their ordinary meaning.

The rule here involved is specific and its language is clear: “shall be allowed ten (10) working days in which to qualify. . . . Failing to qualify by the expiration of ten (10) working days, such employee shall return to his former position. . . .” The rule imposes a clear obligation on the Carrier to allow the successful bidder ten (10) working days in which to qualify.

Carrier has argued that a verbal agreement had been reached which would allow disqualification before expiration of the ten (10) day period. No agreement is in evidence to support such a conclusion. Had the parties intended to

alter the procedure specifically described in the rule, it would have been a simple matter to have so worded their intention.

The provisions of the Agreement are clearly unambiguous. The meaning of this written agreement is not ambulatory and subject to undisclosed or rejected intentions of either of the parties.

In view of the foregoing, the Claimant was entitled to ten (10) days in which to qualify at the Tie Saw-Remover operator's rate. The Carrier's action in disqualifying him after only three (3) days deprived him of seven (7) days of qualifying time and seven (7) days' pay at the Tie Saw-Remover operator's rate. We must sustain the claim.

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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of September 1970.