

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 Employees
(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, EWE-A, General Tamper, headquartered in Millham, Gang M-162 was awarded to an applicant junior to Machine Operator Will Wiley (System Docket 289).

(2) (a) 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 EWE-A rate minus straight time EWE-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 was 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 employe junior to Claimant. The Organization argues that the Claimant, who also bid on the advertised position, should have been entitled to move to the new position, because he was senior to the employe who was awarded the position.

The new position was 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 was filled. To claim such right would be to defeat one of the obvious work stabilization purposes of the Tamper Operator Agreement. Thus, the Claimant was precluded from such position at the time. The fact that the same type of equipment was involved and that 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 Employee involved in this dispute are respectively Carrier and Employee 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. Dever - Executive Secretary

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