

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25984
Docket Number MW-25348

John E. Cloney, Referee

PARTIES TO DISPUTE; (Brotherhood of Maintenance of Way Employees
(
(National Railroad Passenger Corporation (Amtrak)

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

(1) The Carrier violated the Agreement when it assigned junior Machine Operator J. Caetano to operate the General Tamping Machine assigned to Surfacing Gang Z-152 on June 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 1, 19, 22, 23, 24, 25, 26, 29, 30 and July 1, 1981 instead of calling and using Machine Operator Will Wiley who was regularly assigned to operate said machine, senior, available, qualified and willing to perform that service (System Docket 316).

(2) Machine Operator Will Wiley shall be allowed one hundred sixty (160) hours of pay at his time and one-half rate because of the violation referred to in Part (1) hereof."

OPINION OF BOARD: In May 1979, the Organization and the Carrier entered into an Agreement whereby successful applicants would be trained in the operation of Tamping Machines which "require a high degree of skill". Selected applicants were to remain in the positions for at least twenty-four months. Paragraph 5 of the Agreement provided:

"At the start of each Production Year, the Carrier will provide a list of positions available to the occupants of the agreed upon position; and the employees will select such positions in seniority order for the entire production year."

As of June 1981, Claimant Will Wiley was the operator of a General Tamping Machine assigned to Surfacing Gang Z-152 with duty hours of 10:00 P.M. - 6:00 A.M. From June 4 through July 1, 1981, the Carrier used the machine during daylight hours following Claimant's shift and Machine Operator Caetano was assigned to it. Caetano was junior to Claimant.

Rule 44 of the Agreement provides in part:

"(a) Time worked preceding or following and continuous with a regularly assigned eight (8) hour work period shall be computed on the actual minute basis and paid for at time and one-half rates"

The Organization argues Claimant was contractually entitled to operate the Tamper Machine during the "overtime hours" because pursuant to Paragraph 5 of the 1979 Agreement he "selected the General Tamper Machine involved in this dispute".

The Carrier states Paragraph 5 deals with selection by seniority of positions, not of specific machines. Claimant operated the machines on a High Speed Surfacing Gang. On the days at issue Section Improvement Gang M-162 needed a Tamper from 7:30 A.M. until 4:30 P.M. As the Tamper Claimant's gang used was idle during those hours, it was used.

The Board does not view this matter as one of seniority or overtime entitlement as does the Organization. Rather we see the issue as dealing with the right of the Carrier to utilize its equipment. The use of the Tamper Machine during the daylight hours did not interfere with its use by Claimant during his regularly scheduled tour nor were his earnings impaired. Thus any rights he may have under the May 1979 Agreement have not been impinged. We find the Carrier is clearly correct in its belief that the Agreement speaks in terms of positions and does not confer a property right in employees in the machinery used in performing the work of their positions.

The Carrier also raises a procedural question in that it maintains the Organization did not advance its claim in a timely fashion. The Organization denies this and believes the Carrier has confused correspondence with that of another claim. The record is really not conclusive on this point and in view of our decision on the merits we make no procedural findings.

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 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 26th day of March 1986.

