

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29562
Docket No. MW-29222
93-3-90-3-87

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

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

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier failed and refused to permit senior Machine Operator W. H. Casper to displace junior Machine Operator L. G. Ticconi, Jr., on the MP-9 Tamper effective January 26, 1988 (System Docket CR-3832).

(2) As a consequence of the aforesaid violation, Mr. W. H. Casper shall be compensated for all time earned by Mr. L. G. Ticconi, Jr. beginning January 26, 1988 and continuing until Mr. Casper was recalled to service."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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 waived right of appearance at hearing thereon.

The Claimant was given notice of furlough as of January 25, 1988. He held seniority as Machine Operator, Classes 1 and 2. At the time of furlough, he sought the opportunity to displace a less senior employee.

The record shows that a junior Machine Operator was retained in service at the time. The Carrier defended its failure to permit the displacement on the basis that the retained junior employee was assigned to the MP-9 Tamper, and the Claimant "was not qualified to operate the MP-9 Tamper."

During the Claim handling procedure, the Organization stated, however, that the MP-9 Tamper was out of use at the time and that the junior employee was assigned to work for which the Claimant was qualified. The record shows further that there was no contradiction to the Organization's contention as to this machine.

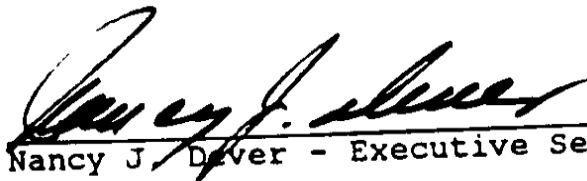
Under these circumstances, there was no basis to determine that the Claimant was not qualified to perform the work assigned to the junior employee while Claimant was on furlough.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of March 1993.