

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 36587  
Docket No. MW-35597  
03-3-99-3-518**

**The Third Division consisted of the regular members and in addition Referee Robert M. O'Brien when award was rendered.**

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

**STATEMENT OF CLAIM:**

**"Claim of the System Committee of the Brotherhood that:**

- (1) The Carrier violated the Agreement when it selected junior Class 1 Machine Operators W. Sandlin and D.A. Downing to receive special training as Jimbo/Excavator machine operators and be qualified in preference to the Claimant for Indianapolis Production Zone 5 bulletin assignments as such effective December 8 and 22, 1997, respectively (System Docket MW-5175).**
- (2) As a consequence of the violation referred to in part (1) above, the Carrier shall train Claimant J. Stapleton to qualify as a Jimbo/Excavator operator and compensate him the difference between what he earned and the Jimbo/Excavator machine operator rate beginning December 8, 1997 and continuing."**

**FINDINGS:**

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

**The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 were given due notice of hearing thereon.

Prior to November 24, 1997, the Carrier brought a new Class 1 Machine (Excavator) onto Indianapolis Production Zone 5. Two Class 1 Machine Operators, D. A. Downing and W. Sandlin, were trained on this new equipment. The Claimant had two more years of Class 1 seniority than Sandlin and 18 more years of Class 1 seniority than Downing.

On November 24, 1997, a new position of Class I (Jimbo/Excavator) Operator was advertised. The position was awarded to Class 1 Machine Operator Sandlin. On December 8, 1997, a new position of Class 1 Excavator Operator was advertised. This new position was awarded to Class 1 Operator Downing.

The Claimant bid on both of the aforementioned positions. However, he was not awarded either position because he was not qualified on the Excavator.

On January 20, 1998, the Organization filed a claim and grievance on behalf of the Claimant contending that he should have been trained on the Excavator when it was brought onto Indianapolis Production Zone 5 in the light of his considerable Class 1 seniority. The Organization requested that the Claimant be afforded the opportunity to train on the Excavator and be compensated the difference between what he was presently earning and what he would have earned had he been awarded one of the Excavator Operator positions.

The Carrier denied the claim asserting that the Claimant was not awarded the Excavator positions because he was not qualified for them. Moreover, according to the Carrier, it has no evidence that the Claimant ever requested to train on the Excavator.

It appears that on this property, Maintenance of Way employees are afforded the opportunity to become qualified on new equipment in seniority order. (See Third Division Award 32439 and the Carrier's May 13, 1998 denial of the instant claim.) The Carrier violated the Claimant's seniority rights when it did not allow him to train on the Excavator after it was brought onto Indianapolis Production Zone 5. Therefore, the Carrier shall afford the Claimant the opportunity to become qualified on this equipment if he is still interested because he had more Class 1 seniority than the two employees who were trained on this new equipment when it was brought onto Indianapolis Production Zone 5.

The Claimant is not entitled to the difference in compensation between what he earned subsequent to December 8, 1997, and what he would have earned had he been awarded an Excavator Operator position in 1997, in our opinion, because there is no documented evidence in the record before us that he ever requested to qualify on the Excavator. The Claimant insists that he made such a request in writing, but he was unable to produce this written request. The Carrier had no evidence that the Claimant ever requested to train in the Excavator.

**AWARD**

**Claim sustained in accordance with the Findings.**

**ORDER**

**This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.**

**NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division**

**Dated at Chicago, Illinois, this 16th day of June 2003.**