

PUBLIC LAW BOARD NO. 7566

BROTHERHOOD OF MAINTENANCE )  
OF WAY EMPLOYES DIVISION )  
IBT RAIL CONFERENCE )  
and )  
CANADIAN NATIONAL/WISCONSIN )  
CENTRAL LTD. )

Case No. 10  
Award No. 10

Claimant: T. Maug

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

1. The Agreement was violated when the Carrier assigned Track Inspector T. Daffinon, instead of Mr. T. Maug to fill a lead tamper operator temporary vacancy and operate the lead tamper during straight and overtime hours beginning on March 8, 2010 and continuing (Carrier's File WC-BMWED-2009-00011).
2. As a consequence of the violation referred to in Part 1 above, Claimant T. Maug shall be compensated for all straight and overtime hours worked by Mr. T. Daffinon while he was improperly assigned to operate the lead tamper beginning March 8, 2010 and continuing."

**Findings:**

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier or employee within the meaning of the Railway Labor Act as approved June 21, 1934.

Public Law Board 7566 has jurisdiction over the parties and the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

The Organization claims that the Agreement was violated when the Carrier assigned a Track Inspector to perform the work of a Lead Tamper, Machine Operator A. Claimant had already bid to the position for a start in the following month. The Lead Tamper work was not incidental to the job of a Track Inspector and should have been given to Claimant who was qualified, who would be starting in the position, and who was working as a Machine Operator B – a lower position.

The Carrier responds that the Organization has failed to meet the burden of proof. A Track Inspector may perform work incidental to the position. The job was bulletined for late April and the work at issue was performed periodically. It was not performed for 30 days straight and therefore the Rule was not implicated.

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Rule 9 addresses when a qualified and lower rated employee should be offered a position:

When vacancies or new positions of 30 days or less are filled, such vacancies will first be offered to senior qualified employees working in a lower paying classification that is assigned to the headquarter location or gang on which the vacancy exists.

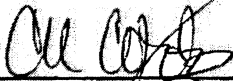
Claimant was a senior qualified employee working in a lower paying classification assigned to a headquarters or gang on which the vacancy existed. The Track Inspector was in a higher paying classification. Further, the work of operating a Tamper is not work incidental to a Track Inspector position.

**Award:**

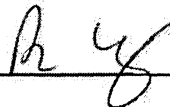
The claim is sustained and the Carrier must afford the Claimant the remedy requested in Part 2 of the claim within thirty (30) days of the effective date of the Award.



Brian Clauss, Chairman



Cathy Cortez, Carrier Member



Ryan Hidalgo, Organization Member

Signed on November 10, 2015