

The Second Division consisted of the regular members and in addition Referee Robert A. Franden when award was rendered.

Parties to Dispute: { International Brotherhood of Electrical Workers
{
{
{ Consolidated Rail Corporation

Dispute: Claim of Employees:

1. That under current agreement the carrier improperly placed Leonard Glista and Joseph Franko, Jr. on the electrician roster which includes the former Erie Lackawanna Brier Hill Shops, and improperly awarded the aforementioned employees positions as electrical workers at the Brier Hill Shops following a thirty-day period of employment there at helper's rate of pay which began on October 23, 1976 for Glista and November 13, 1976 for Franko, Jr.
2. That accordingly the carrier be ordered to remove Leonard Glista and Joseph Franko, Jr. from the aforementioned electrician and to pay to each of the claimants listed below at the Brier Hill Shops eight hours' pay at time and one-half the current electrician rate for each and every day the aforementioned employees are improperly employed as electrical workers.

The named claimants are:

Eiesman, F. W.
Romandetti, C.
Holloway, G. E.
Terzo, D. E.
Marts, S. W.
Moyer, A. L.
Hurd, R. R.
Brainard, G. L.
Carr, R. L.
Lowry, Jr., J. L.
Bell, J. R.
Stock, C. J.
Douglas, T. G.
Gay, R.
Crowley 3RD, P. M.
Pavlock, T.

Findings:

The Second 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 organization bases this claim on the application of the qualification Rule No. 73 of the agreement entered into by the organization on the former Erie-Lackawanna Railroad.

The carrier maintains that its actions of working the employees, Glista and Franko, on electrical worker positions and placing them on the Electrician's Roster after thirty (30) days' work as electrician trainees were supported by Article VII B-1 of the March 11, 1976, Implementing Agreement.

The question of whether the Qualification Rule of the Erie-Lackawanna Agreement or the March 11, 1976, Implementing Agreement governs was considered by Public Law Board No. 2217 in Case No. 1, Award No. 1 which matter was between Conrail, as successors to the former Erie-Lackawanna Railroad, and the International Association of Machinists and Aerospace Workers. We believe the decision of that Board correctly resolves the issue. Said Award reads in pertinent part as follows:

"The Carrier concedes that on certain of the former railroads which now comprise Conrail (such as the Erie Lackawanna), it was necessary that employees serve stipulated periods of apprenticeship; whereas on other carriers, employees acquired seniority when assigned to a position. Because of that disparity, Carrier urges that the disparate practices could not be allowed to continue after the creation of Consolidated Rail Corporation and the March, 1976 Agreement was negotiated in conformance with statutory requirements so as to supersede the prior Erie-Lackawanna requirements.

It is incumbent upon this Board to determine if the prior Erie Lackawanna agreements were superseded by the 1976 Agreement and, absent agreement as to the parties' intent, we do so based upon a review of the evidence of record which is properly before us.

Article VII states the parties' agreement that certain rules contained in the body of that document specifically supersede provisions of the former railroad agreements with respect to '... award of positions and seniority, ...'

Thereafter, the agreement states (inB-1(a)), that seniority of mechanics will date from the first day employed as a mechanic provided the employees qualify on such positions. Paragraph (b) refers to seniority of helpers and Paragraph (c) refers to employees entering the mechanic's class without

"such seniority. Thus there is a strong indication to us that the parties intended that the 1976 Agreement supersede the prior Erie-Lackawanna Agreement in this regard. Moreover, Article IV of the 1976 Agreement further reinforces that conclusion."


Our adoption of the reasoning applied in that Award to the instant case compels us to deny the claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 21st day of January, 1981.