

The Third Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

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

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

(1) The Carrier violated the Agreement when it refused to permit Trackman K. F. Adams to displace a junior trackman on December 19 and 20, 1983 (System Docket CR-713).

(2) Because of the aforesaid violation, Trackman K. F. Adams shall be allowed sixteen (16) hours of pay at his straight time rate."

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 employees involved in this dispute are respectively carrier and employees 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.

On December 19, 1983, Claimant was displaced by a senior employee. The Organization contends the Claimant went to the Division Office and attempted to determine if junior employee E. Troy was still working. According to the Organization, he was told Troy was furloughed. Troy was, in fact, not furloughed and worked through December 20, 1983.

Carrier's Philadelphia Division Engineer answered the time claim by letter of February 9, 1984, and stated in pertinent part:

"Our records indicate E. Troy was holding a Trackman/casual driver position. In researching your file, you do not possess a M.W. 200 card qualifying you as a casual driver. Therefore, you would not be qualified to bump Mr. Troy."

The Organization argues that Rule 4, Section 2 states that an employee may exercise seniority to a position for which he is qualified when displaced by a senior employee. The Organization insists the Carrier failed to provide the Claimant with accurate information concerning the position occupied by junior employee Troy. The Organization claims this failure constitutes a violation of the Agreement. The Carrier advances the proposition that the Claimant was properly denied any attempt to displace junior employee Troy because the Claimant was not qualified as a Trackman/casual driver. The Carrier cites Rule 4 - Seniority - Section 2(a)2 and asserts it provides that an employee may exercise seniority to a position for which he is qualified when physically displaced by a senior employee. (Emphasis added)


The Organization is accurate in its representation that the Claimant was not initially told he was not qualified. Notwithstanding, when, on February 9, 1984, the Division Engineer initially denied this claim, he clearly set forth his position as quoted hereinabove. Once the Carrier asserted the Claimant did not possess a M.W. 200 card and, accordingly, was not qualified as a casual driver, the burden of proof shifted back to the Organization. Our analysis of the on-the-property handling causes us to conclude the Organization did not rebut this position.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dexter - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of June 1988.