

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 Welder Helper R. L. Knight to displace Welder Helper R. L. Fisher at Mansfield, Ohio on August 6, 1984 (System Docket CR-1281).

(2) The claimant shall be allowed eight (8) hours of pay at his straight time rate for August 6, 1984."

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 employes 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.

This Claim was filed on August 15, 1984, on behalf of the Claimant asserting that on August 6, 1984, he attempted to displace a junior employee at Mansfield, Ohio, at 6:45 A.M., but was denied this right. According to the Organization, the Claimant was advised Gang No. 49 had started work at 6:00 A.M. The Carrier's refusal to allow the Claimant his displacement right is charged by the Organization to be a violation of Rule 4. The Organization contends Gang No. 49 has an assigned starting time of 7:00 A.M. The Organization further argues that, if the Carrier intended to defend against this claim based upon its contention the starting time had been changed, then the Carrier was obligated to present proof in support of this affirmative defense. This Board disagrees. The Carrier, by letter of April 17, 1985, informed the Organization's General Chairman that the starting time had been changed pursuant to Rule 12. Thereafter, the record contains no indication the Organization challenged the authenticity of this statement.

Given this conclusion, the only remaining issue is whether or not the Agreement permitted the Carrier to deny the Claimant displacement rights after he arrived at the work site 45 minutes after Gang No. 49 started work. Rule 4 is silent on this issue. In the absence of restrictive language, we must conclude the Carrier's action was not prohibited.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest.


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 16th day of December 1988.