

The Third Division consisted of the regular members and in addition Referee Elliott H. Goldstein 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 failed and refused to allow Messrs. R. Hodle, B. Margavage and B. Davis holiday pay for the 1984 Thanksgiving holidays (November 22 and 23, 1984) (System Dockets CR-1405, CR-1406 and CR-1404).

(2) Mr. R. Hodle shall be allowed sixteen (16) hours of pay at the Class 2 Machine Operator's straight time rate, Mr. B. Margavage shall be allowed sixteen (16) hours of pay at the foreman's straight time rate and Mr. B. Davis shall be allowed sixteen (16) hours of pay at the trackman's straight time rate because of the violation referred to in Part (1) above."

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.

Claimants have established and hold seniority in the Track Department. Claimant Hodle was regularly assigned to the Mt. Pocono Gang prior to the time the instant dispute arose. He worked on November 21, 1984, and observed Thursday and Friday, November 22 and 23 as Thanksgiving holidays. He commenced his assigned vacation on the following Monday, November 26, 1984. Upon his return to work on Monday, December 3, 1984, he learned that his regularly assigned position had been abolished, effective November 30, 1984. Claimant Hodle invoked his seniority rights under Rule 4 and displaced a junior employee on December 5, 1984.

Claimant Margavage was also regularly assigned to the Mt. Pocono Gang. He performed work on Friday, November 16, 1984 and commenced his assigned vacation on Monday, November 19, 1984. He reported back for work on

Monday, December 3, 1984 and learned that his regularly assigned position had been abolished, effective November 30, 1984. Claimant Margavage exercised his seniority by displacing a junior employee on December 5, 1984.

Claimant Davis held a regularly assigned position at Phillipsburg, New Jersey. He worked on Friday, November 16, 1984, and commenced his assigned vacation on Monday, November 19, 1984. When he returned to work Monday, December 3, 1984, he learned that his position had been abolished, effective November 30, 1984. Claimant Davis exercised his seniority on December 5, 1984.

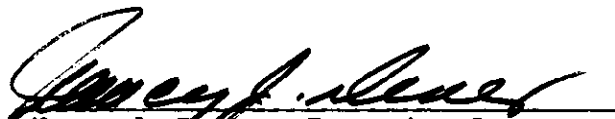
All three Claimants seek holiday pay for November 22 and 23, 1984, the Thanksgiving holidays. The only question to be resolved is whether each claimant was "available" for work on the first qualifying work day following the holiday. We conclude that each was available. This conclusion is based upon the fact that each claimant had no prior knowledge that their respective positions were to be abolished during their respective scheduled vacations and each reported for work, ready to protect their assignments only to find they had no assignment to protect nor were they able to displace prior to the starting time of a position occupied by a junior employee at another location.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 2nd day of March 1989.