

The Third Division consisted of the regular members and in addition Referee Martin F. Scheinman 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 assigned Trackman L. J. Fulkrod to fill a temporary vacancy as cook in Gang 56233 on July 27, 28, 29, 31 and August 1, 1983 instead of calling and using Cook T. C. Wise who was senior, available, willing and qualified to fill that vacancy (System Docket CR-627).

(2) Because of the aforesaid violation, Cook T. C. Wise shall be allowed forty-two (42) hours of pay at the cook's 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 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.

The relevant facts of this Claim are not in dispute. Claimant is senior to L.J. Fulkrod in the Camp Cook Class. L.J. Fulkrod is senior to Claimant in the Trackman class.

On July 25, 1983, Carrier required a Camp Cook for Gang 56233. It contacted M.S. Swanson, who held seniority in that class, to determine his availability to fill the position. On August 1, 1983, M.L. Swanson elected not to fill that position, whereupon Claimant was placed in it. However, in the interim period from July 27 to August 1, 1983, L.J. Fulkrod, who was then working as a Trackman, was upgraded to the Camp Cook position.

As a result of Carrier's action, the Organization filed this Claim, seeking five days' (42 hours) pay for Claimant at the regular rate. Carrier timely denied the Claim. Thereafter the matter was handled in the usual manner on the property. It is now before this Board for adjudication.

The Organization maintains that as the Senior Camp Cook, Claimant should have been called to fill the temporary vacancy while M.S. Swanson was deciding if he wanted that position. In support of this contention, the Organization insists that positions, whether temporary or permanent must be given to those available and qualified employees who hold seniority in the class at issue. Since Claimant held more seniority as a Camp Cook than L.J. Fulkrod, the Organization asks that the Claim be sustained.

Carrier, on the other hand, asserts that it complied with the Agreement under the facts of this case. It points out that Rule 3, Section 4(a) permits it to fill positions on a temporary basis, pending award. Furthermore, it argues, Section 4(a) permits an employee working in a lower rated class to be upgraded to the higher position temporarily. In fact, Carrier insists L.J. Fulkrod, holding seniority as a Trackman was upgraded in this manner. Therefore, Carrier argues that it strictly followed the seniority rules in this dispute. Accordingly, it asks that the Claim be rejected.


After careful review of the record evidence, we are convinced that the Claim must be sustained. Section 1 of Rule 3 makes clear that the term "seniority" means first, seniority in the class in which the assignment is to be made... i.e. in the Camp Cook class. Nothing in Section 4(a) contradicts this principle. Instead it simply provides that in filling temporary vacancies, the most senior employee, whether working in the same class or a lower rated one, will be given preference. Nothing in that provision precludes furloughed employees who hold seniority over working employees in the disputed class from being given preference for a temporary vacancy. As such, the fact that L.J. Fulkrod had seniority over Claimant as a Trackman is simply irrelevant, since the vacancy was in the Camp Cook position. Thus, the record reveals that Claimant, and not L.J. Fulkrod should have been called in on the days in question. Accordingly, and for the foregoing reasons, the Claim must be sustained.

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 13th day of April 1989.