

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin when award was rendered.

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

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

(1) The Agreement was violated when the Carrier assigned junior employe E. Colburn instead of Mr. S. Shumski to work as a trackman on the SC-250 Camp Car Gang from May 18 through May 25, 1988 (System Docket MW-52).

(2) As a consequence of the aforesaid violation, Mr. S. Shumski shall be allowed ten (10) hours' pay at the trackman's rate for each date from May 18 through May 25, 1988."

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.

A significant factual dispute exists in this seniority Claim.

Claimant was recalled to service from furlough in April, 1988. He initially failed his return to work medical examination on April 5, 1988, but successfully passed a repeat examination on May 18, 1988.

The Organization contends the Agreement was violated when Carrier provided Claimant incorrect information about work opportunities available to his seniority. According to the Organization's evidence, which includes Claimant's narrative statement, Claimant alleges he immediately attempted to exercise his seniority to any available position. Claimant says he thereafter

made frequent attempts to exercise his seniority. The Youngstown Division Engineer's Headquarters had recently been relocated to Pittsburgh and, due to confusion and inexperience, the assignment clerks in the Headquarters told him that no work was available to him. The record on the property shows that a junior employee did work sometime between May 18 and May 26, 1988. Claimant's seniority would have entitled him to displace this junior employee if he had been properly informed about the junior employee.

Carrier does not deny it has an obligation to provide correct information. It disputes, however, Claimant's contention that he tried to immediately exercise his seniority but was prevented from doing so because he was provided erroneous information. Carrier says that Claimant wanted to wait a few days to return to work. The Agreement allowed Claimant 10 days to exercise his seniority. Carrier says he used most of this time before displacing into a Vehicle Operator position on May 26, 1988.

It is the conclusion of the Board that the Claim must be sustained in part. After careful review of the record, the Board finds the evidence to weigh in favor of the Claimant's position. There is probative evidence in support of the allegations of the Claim whereas the Carrier's position relies only on the unsupported assertions of the various hearing officers. It is undisputed that 1988 was the first year that the recall of Youngstown Division employees was performed in the Pittsburgh office. In addition, successful completion of the repeat examination on May 18, 1988, indicates that Claimant was making himself immediately available. Finally, there is Claimant's un-rebutted written statement which says he was misinformed by Carrier personnel about available work.

Carrier attempted to modify the information in its June 29, 1989, letter regarding the junior employee's start date. But the record on the property was closed prior to Carrier's November 30, 1989, attempted modification. A procedural rule of the Board precludes consideration of matters which were not part of the record on the property. The record in this matter provides no compelling basis for the Board to depart from this rule.

The record is devoid of a basis for awarding Claimant pay for May 18, 1988. There is no information which suggests that Claimant would have completed his repeat medical examination early enough in the day to be able to work a full day. Accordingly, Claimant shall be allowed all earnings lost for the time worked by the junior employee for the period from May 19, 1988, through May 25, 1988.


A W A R D

Claim sustained in accordance with the Findings.

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Award No. 28839  
Docket No. MW-29072  
91-3-89-3-507

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:   
Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 25th day of June 1991.