

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 30776  
Docket No. MW-30022  
95-3-91-3-416

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn 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 Southern Tier Division employes Messrs. W. Earley, F. Sykes and J. Crane to perform work on the Philadelphia (former New Jersey) Division at the beginning of the 1990 production season and continuing (System Docket MW-1214).

(2) The February 3, 1983 Letter of Agreement was violated when the Carrier allowed Messrs. W. Earley, F. Sykes and J. Crane to establish and accrue seniority, prior to 1990, on the Philadelphia (former New Jersey) Division.

(3) As a consequence of the violation referred to in Part (1) above, furloughed Philadelphia Division employe Mr. R. J. Parvel shall be paid for all straight time and overtime worked by Mr. W. Earley at the trackman's respective rates of pay beginning on April 11, 1990 and continuing until the violation is corrected; furloughed Philadelphia Division employe Mr. R. Fogel shall be paid for all straight time and overtime worked by Mr. F. Sykes at the trackmen's respective rates of pay beginning on April 16, 1990 and continuing until the violation is corrected, and furloughed Philadelphia Division employe Mr. C. Naugle shall be paid for all straight time and overtime worked by Mr. J. Crane at the trackman's respective rates of pay beginning April 23, 1990 and continuing until the violation is corrected.

(4) As a consequence of the violation referred to in Part (2) above, the Carrier shall correct the seniority dates of Messrs. W. Earley, F. Sykes and J. Crane on the Philadelphia (former New Jersey) Division seniority roster in compliance with the Agreement."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

By letter dated February 8, 1983, the parties agreed that effective March 1, 1983, certain territory of the former Youngstown, Metropolitan, Hoboken, and New Jersey Seniority Districts and entire Lehigh Seniority District would be transferred to the Mohawk-Hudson, Southern Tier or New Jersey Seniority Districts. Following that agreement, Messrs. Earley, Sykes and Crane appeared on the New Jersey Seniority District Roster.

From 1984 through 1990 the Carrier revised the Philadelphia (former New Jersey) Seniority District Roster. During the period 1984 through 1990 no protests were received by the Carrier concerning the appearance of Earley, Sykes and Crane on the Rosters.

Claim was filed on April 25, 1990 alleging that the Carrier violated Rule 4 of the Schedule Agreement by recalling Earley, Sykes and Crane for Philadelphia Trackmen positions instead of Claimants further asserting that Earley, Sykes and Crane were improperly shown on the Roster.

Rule 4, Section 6(b) of the Agreement states that "Employees shall have 90 days from the date the roster is posted to file a protest, in writing, ..." No protests were filed during the period 1984 through 1990 when the names of Earley, Sykes and Crane appeared on the Rosters. A protest in 1990 over 1984 placements on the Roster is therefore time-barred. See Third Division Awards 27313, 27314, 27315, 27316, 27317, and 27318.

AWARD

Claim dismissed.

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O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Dated at Chicago, Illinois, this 6th day of April 1995.