

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26229
Docket Number MW-26194

Charlotte Gold, Referee

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 Agreement was violated when the Carrier changed the seniority date of Trackman E. R. Gee from June 30, 1974 to March 27, 1978 and improperly furloughed Mr. Gee on April 28, 1982 (System Dockets CR-649 and CR-650).

2. As a consequence of the aforesaid violation, Trackman E. R. Gee shall be afforded a seniority date of June 30, 1974 and he shall be compensated for all wage loss suffered beginning April 28, 1982 and continuing until such time as the violation is corrected."

OPINION OF BOARD: It is Carrier's contention that Claimant, a Trackman who entered Carrier's service on the former Erie Lackawanna Railway Company on June 30, 1974, had his record closed out in 1975 and was reestablished as an employee on March 27, 1978. The Organization maintains that following his being furloughed in October, 1974, Claimant retained his seniority and consequently his true seniority date is June 30, 1974.

The Organization supports its Claim by noting the Claimant was recalled for three days in December, 1977, at Harding Yard in Marion, Ohio, and was once again furloughed. When Carrier advertised Trackmen's positions for bid in March, 1978, Claimant responded and was awarded a bid.

It is clear from the record that Claimant was in fact treated as an employe during the period in which Carrier alleges that he was no longer in service. Claimant would not have been recalled for the three days in 1977 were he not a bona fide furloughed employe, nor would he have been allowed to bid on a position in 1978. When Carrier dovetailed the seniority of all employes of railroads consolidated into Conrail, Claimant was recognized as having a June, 1974, seniority date.

This Board finds no basis for Carrier's later decision to change Claimant's seniority date to 1978 following a protest filed by another employe in 1982. We recognize that Erie Lackawanna records were virtually nonexistent during the period in question, but we cannot conclude that that is any reason to deny Claimant his rights. At the same time, we find no basis for denying the Claim on procedural grounds.

Claimant shall be afforded a seniority date of June 30, 1974. He shall be compensated for all wage loss suffered beginning April 28, 1982, and continuing until the time the violation is corrected, less outside earnings and less compensation for any time that he would have been laid off with a seniority date of June 30, 1974.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 29th day of January 1987.