

The Third Division consisted of the regular members and in addition Referee Gil Vernon 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 to recall furloughed Trackman H. T. Wertman to fill a temporary vacancy as rail lubricator maintainer at Columbia, Pennsylvania on February 19, 22, 23, 24, 25, 26, March 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17 and 18, 1982 (System Docket CR-54).

(2) Because of the aforesaid violation, Mr. H. T. Wertman shall be allowed one hundred sixty (160) hours of pay at the rail lubricator maintainer's straight time rate (\$9.25 per hour)."

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 claim protests the Carrier's assignment of employee Kline to repair lubrications on the Port Board Branch. Employee Kline is junior to the Claimant as a trackman but senior to the Claimant as a repairman. In their Submission, the Organization also claimed that the Claimant had seniority rights--superior to Kline's--as a rail lubricator maintainer.

The Carrier in its Submission argued the Claimant had no seniority as a rail lubricator maintainer at the time of the claim. That is because prior to February 1, 1982, the former Pennsylvania property had no seniority classification for a rail lubricator maintainer. After February 1, 1982, such a classification did exist and the Claimant was the first to establish seniority thereunder. This didn't occur until March 17, 1982. Therefore, they argue he did not have seniority rights to the job in question. In addition, they argue that in any event the work involved was not rail lubricator maintainer work but was repairman work for which Kline was entitled.

In their Rebuttal brief, the Organization does deny the Carrier's assertion concerning the seniority situation on the Pennsylvania property. However, they do contend that assuming, arguendo, that the Claimant did not have seniority as a rail lubricator maintainer, he would nevertheless have been the senior qualified available employee as between him and Mr. Kline, who did not possess seniority as a rail lubricator maintainer and was junior to the Claimant as a trackman.

After reviewing the record the Board is obliged to say that the claim is deficient in two critical areas. First, there is not enough information to determine precisely what Mr. Kline was doing. It is not clear if he was doing repair work or rail lubricator maintenance work. A distinction may exist between the two either in reality, the Agreement and/or practice. Nor is it clear that whatever he was doing was strictly reserved to the rail maintainer class of seniority.

The other deficiency in the claim is the glaring fact which cannot be ignored that the Claimant had no seniority as a rail lubricator maintainer until March 17, 1982. The Organization did assert that the Claimant's seniority as a trackman entitled him to the work. However, there is nothing but plain assertion to substantiate this claim. There would have to be more than is offered for us to accept that the seniority rules with respect to the work in question--whatever it was--reserved the work to trackmen and not repairmen.


In view of the foregoing, the claim is denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of March 1988.