

The Third Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Consolidated Rail Corporation

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Consolidated Rail Corporation (CONRAIL):

Claim on behalf of R. M. McClure for 52 hours pay at his punitive rate of pay, \$208 per diem pay, and mileage allowance for 1,080 miles, account of Carrier violated the current Signalmen's Agreement, as amended, when it refused to allow or permit him to properly bump in the fibre optics gang at Wooster, Ohio upon his return from sick leave. Carrier file SD-2397."

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 basic facts in this case are set forth as follows: Claimant returned to work from sick leave on September 24, 1986, and elected to bump a junior employee who was working on a temporary position on a Fibre-Optics gang at Wooster, Ohio. Carrier apprised him that he could not displace a position on this gang, since the four (4) junior employees working on said gang were holding temporary positions. He displaced a junior employee at Wooster, Ohio, who was working a DATS Maintainer position, and later filed a Claim, because said employee was allowed to work in the Fibre-Optics gang. Said Claim was filed on November 28, 1986.

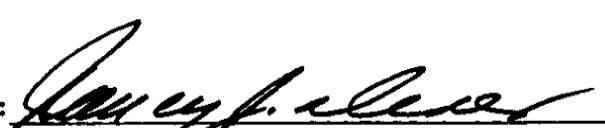
Initially, the Organization contended that Claimant was entitled to displace on the Fibre-Optics gang, but it cited no specific provision of the Controlling Agreement as having been violated. When Carrier responded to the Claim on January 23, 1987, it stated that Claimant could not displace on the gang under Rule 2-A-3(A) because the four (4) positions were of a temporary nature and, as such, Claimant displaced the Maintainer's position at Wooster, Ohio. In its response letter of March 17, 1987, the Organization inquired why the employee who displaced on the Fibre-Optics gang was allowed to do so, when Claimant was denied displacement rights. By letter dated April 15, 1987, Carrier reiterated that Claimant could not bump an employee holding a temporary position under Rule 2-A-3(A), and also noted that Claimant properly displaced an employee holding a permanent Maintainer's position at Wooster. Said employee's position was abolished at Wooster, Ohio on October 14, 1986.

In considering this case, the Board, of judicial necessity, must point out that the Organization on the property did not set forth what exact Rule was violated by the contested personnel action and whether Claimant's job was abolished when he was on sick leave or returning to work from such status. The first time there is any reference to Claimant's job being abolished is on page 4 of the Organization's Submission and the first time a Rule is cited is on the same page. In other words, the Organization contended that since his job was abolished, he was entitled to exercise displacement rights under Rule 2-C-1(a)-3 of the Controlling Agreement. This is plainly new argument. Similarly, Carrier raises a new argument, when it asserts that Claimant's grievance was belatedly filed. This line of defense was not pursued on the property and is improperly before the Division. Since the Organization's on property handling of the grievance failed to establish a direct persuasive nexus between the disputed action and a specific applicable Rule, this Board has no basis for determining whether a violation occurred. As the moving party, the Organization has the burden of proving a Rule violation.

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 25th day of May 1990.