NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Form 1

Award No. 29564
Docket No. MW-29236
93-3-90-3-110

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. 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 Carrier violated the Agreement when it assigned four (4) Seniority District No. 4 employes to fill four (4) temporary vacancies (two repairmen foremen, one repairman and one Class 1 Machine Operator) on the Youngstown Division Seniority District (Brier Hill Shop) on December 16, 17, 18, 19, 23, 26, 27, 30 and 31, 1985 and January 2, 6, 7, 8, 9, 13, 14, 15, 16, 20, 21, 22, 23, 27, 28, 29, 30 and 31, 1986, instead of assigning Messrs. K. Spaulding, M. Drabison, W. Flower and P. Hake who had established and held seniority on the Youngstown Division Seniority District and who were available and qualified to fill those vacancies (System Dockets CR-2525, CR-2526, CR-2527 and CR-2528).

(2) Because of the aforesaid violation, Messrs. W. Flower and M. Drabison shall each be allowed two hundred seventy (270) hours of pay at the repairman foreman's straight time rate, Mr. P. Hake shall be allowed two hundred seventy (270) hours of pay at the repairman's straight time rate and Mr. K. Spaulding shall be allowed two hundred seventy (270) hours of pay at the Class 1 Machine Operator's straight time rate."

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 employe 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 Claimants, in furlough status at the time of the Claim, hold seniority in the Youngstown Division Seniority District. The Claim states that certain repair work was performed at the Brier Hill Shop in Youngstown (within the Youngstown Division Seniority District) by employees from Inter-Regional Seniority District No. 4 who hold no seniority at Youngstown.

Two similar Claims were at issue between the parties. In response to an Organization suggestion, the Carrier wrote to the General Chairman as follows:

> "We are agreeable to hold subject System Dockets [the Claims herein] in abeyance until a decision is reached on System Dockets CR-2376 and CR-2377, at which time we will again review these cases in light of decision rendered."

System Dockets CR-2376 and CR-2377 were the subject of sustaining Award No. 29 of Public Law Board No. 3781. That Award noted, "The Brier Bill Repair Shop is located on the Youngstown Division in Inter-Regional Seniority District 2."

When the Organization sought settlement of the Claims here under review on the basis of this Award, the Carrier apparently refused to sustain the Claims. (The Board states "apparently", because the record shows no additional on-property correspondence.)

In its presentation to the Board, the Carrier defends its position by noting a distinction between the Youngstown Division and Interregional Seniority District #2. As noted by the Organization, there is no record of such distinction being raised on the property. Further, the Organization cites Appendix D, which reads in pertinent part as follows:

"Seniority District #2 includes the territory of the following:

Allegheny 'A' Division
Allegheny 'B' Division
Pittsburgh Division
Youngstown Division"

In view of this provision and Public Law Board No. 3871's reference to Brier Hill as within the Youngstown District, the Board is not persuaded that there is a meaningful difference between this Claim and those reviewed by Public Law Board No. 3871. It follows that a similar sustaining Award is in order.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of March 1993.

CARRIER MEMBERS' DISSENT
TO
AWARD 29564, DOCKET MW-29236
(Referee Marx)

In this Award, the Majority stated that it did not find a meaningful difference between this claim and the previous claims (System Docket CR-2376 and CR-3777) which were sustained by Award No. 29 of Public Law Board No. 3781. We disagree. There is clear seniority district distinction. In the claims reviewed by PLB 3781, the claimants possessed Inter-Regional District No. 2 seniority and they complained that employees with Inter-Regional District No. 4 seniority performed work on equipment at the Brier Hill Repair Shop, and the Neutral concluded:

> "Rule 4, Section 1(b) and Section 5(b) and (c), clearly provide that seniority standing exists on the basis of rosters of specified seniority districts and that such seniority districts may only be changed by agreement between the Senior-Director-Labor Relations and the involved General Chairman. Moreover, it is axiomatic that equipment has no significance in regard to seniority and that, although Management has sole authority to determine where equipment shall be located, seniority does not follow equipment and hence, this authority does not make seniority interchangeable between and among districts. (Emphasis added)"

In the instant case, the Claimants have Youngstown District Seniority, they DO NOT have Inter-Regional District No. 2 seniority.

The Organization skillfully directed the Neutral's attention to Appendix D which reads in pertinent part as follows:

> "Seniority District #2 included the territory of the following:
>
> Allegheny "A" Division
> Allegheny "B" Division
> Pittsburgh Division
> Youngstown Division"

From the above, the Neutral apparently concluded the above cited "territory" depicting the geographical boundaries of Seniority District #2 conveyed

rights to the Youngstown Seniority District. He is absolutely wrong. Inter-Regional Seniority District #2, as well as IR Districts Nos. 1, 3, and 4 cover the work territory for all rail and undercutting units. Rail and undercutting gangs are not advertised to Division type seniority districts such as the Youngstown Seniority District. The work in question in the instant case involved undercutters which accrues to the Inter-Regional Seniority Districts, as clearly defined by past practice and Award 29 of PLB 3781. By this Award, the Organization has won the best of both worlds. In Award No. 29 of Public Law Board No. 3781, they argued that employees of Inter-Regional Seniority District No. 2 have a demand right to work performed in their seniority district and the Neutral agreed with their position. In the Instant case, they argued that Youngstown Seniority District employees have a demand right to the exact same work, clearly, a position opposite to that which was presented before PLB 3781.

In addition the Majority in this case stated there is no distinction between seniority districts being raised on the property. We disagree. The Majority evidently overlooked Carrier's July 19, 1989 response to the General Chairman which addressed this issue and was entered into the record 7 months prior to the Organization's filing of this dispute with the NRAB.

Aside from the fact that this is a costly windfall award to employees who had no demand right to the work, the Carrier is now left in a quandary as to what "seniority district" (Inter-Regional District #2 or Youngstown District) should the Carrier assign such work in the future. Obviously, whichever seniority district is selected, the Carrier will certainly be wrong from the Organization's point of view.

In summary, the Award is palpably erroneous and the monetary windfall is undeserved. We dissent.

R. L. Hicks

M. W. Fingerhut

M. C. Lesnik

P. V. Varga

J. E. Yost