

35

SPECIAL BOARD OF ADJUSTMENT
ESTABLISHED PURSUANT TO
SECTION 11 OF THE
NEW YORK DOCK II CONDITIONS

CASE NO. 5

PARTIES) BROTHERHOOD OF RAILWAY CARMEN OF THE UNITED STATES
) AND CANADA
TO)
)
DISPUTE) SEABOARD SYSTEM RAILROAD

STATEMENT OF CLAIM:

"Claim in behalf of furloughed DeCoursey Carmen Painters J. D. Hubbard, P. R. Black and D. E. Black for New York Dock Protective Conditions." (BRC File 574-1152-T-347; L&N File 16-AA-NYD(94-96))

FINDINGS:

Basically, this is a companion case to Case Nos. 2, 3 and 4, except as concerns the claim involving two Claimants having been furloughed on May 25, 1982 and one Claimant having been furloughed on March 2, 1984.

In regard to the latter furlough involving Claimant Hubbard, he was reportedly injured in an automobile accident sometime prior to making a request on June 3, 1983 for leave of absence, which was granted by the Carrier. Thereafter, when Carrier learned of Claimant's medical release to return to service, it posted timely notice of the abolishment of a position which Claimant intended to exercise his seniority and furloughed Claimant effective March 2, 1984.

It is the Carrier contention that no painters had been employed at DeCoursey since Claimant Hubbard went on leave of absence on June 3, 1983, and that local officials had failed to abolish his position when other positions were abolished and employees furloughed in August 1983. It submits his position was not being filled while Claimant was on leave of absence.

In addition to other arguments as advanced in the previous cases, the BRC states:

"Carrier argues that Claimants were offered employment at South Louisville Shops, which they refused, and therefore should not be entitled to

the benefits under New York Dock.

South Louisville Shops are located some one hundred and twenty-five (125) miles from DeCoursey Shops and would, therefore, require an employee to move his place of residence or place undue burden upon such employee.

Section 5 of Article I of New York Dock provides that unless an effected employee is offered comparable employment that does not require a change of residence, he does not forfeit his protective benefits under this agreement and, would thus, render the Carrier's argument irrelevant and invalid in this case."

The Carrier's position on this particular aspect of the dispute appears to have been set forth in a letter dated June 19, 1984 to the BRC. Included in the Carrier's 5-page denial of the instant claim was a penultimate paragraph which read as follows:


"Furthermore, these three claimants have not taken advantage of employment rights they have under their working agreement. New programs were started at Louisville at the beginning of 1984 for which there has been a critical need for skilled painters. Claimants P. R. Black and D. E. Black were contacted in December 1983 and offered employment at South Louisville Shops effective January 3, 1984, which they declined. Claimant J. D. Hubbard, whose doctor released him to return to work on March 12, 1984, also declined such employment."

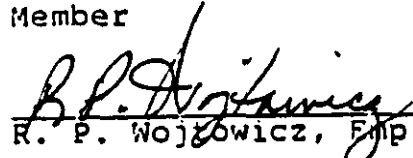
Insofar as this Board's determination is concerned, we do not find the Board has been presented sufficient information to pass judgment upon this particular aspect of the dispute. However, for those same reasons set forth in disposition of Case No. 2, we find that the instant claim should be denied.

AWARD:

Claim denied.


Robert E. Peterson, Chairman
and Neutral Member


J. T. Williams, Carrier Member


R. P. Wojtowicz, Employee Member

Jacksonville, FL
May 29, 1985