

PUBLIC LAW BOARD NO. 2960

AWARD NO. 96
CASE NO. 130

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees
and

Chicago & North Western Transportation Company

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it did not assist Trackman Robert Maze in determining where he could exercise his seniority over a junior employe due to force reduction. (Organization File 8T-4171; Carrier File 81-83-200).
- (2) Because a junior employe was allowed to work while the Claimant was furloughed, he shall be allowed 136 hours of pay at the straight time rate.

OPINION OF THE BOARD

This Board, upon the whole record and all of the evidence, finds and holds that the Employe and Carrier involved in this dispute are respectively Employe and Carrier within the meaning of the Railway Labor Act, as amended, and that the Board has jurisdiction over the dispute involved herein.

The Claimant established and holds seniority as a Trackman on the Wisconsin and Ore Divisions. The Claimant was regularly assigned to Tie Gang 1101 which was abolished at the close of work

on August 19, 1983. At 10:31 a.m. on that date, the Claimant contends he telephoned the Roadmasters Office in Escanaba, Wisconsin, requesting information as to where, on the Ore Division, he could exercise his seniority and displace a junior employee. He also contends he was informed that no junior employees were working on that Division, so on August 22, 1983, he telephoned ADM-E Terbell's office and spoke with Clerk Blase Cantanese concerning displacement of a junior employee. Again he asserts that he was informed that no junior employees were working on the Wisconsin Division. The fact is, that there were 150 employees working on the Wisconsin that were junior to the Claimant.

The claim then seeks compensation for the time the junior employees were working. In support of the claim, the Union cited Rules 4(c), 12(b) and 13. Particularly relevant here is Rule 12(b), which warrants that when displaced, an employee is "entitled to assistance from Assistant Division Manager-Engineering's office in determining where he can exercise his seniority".

The Carrier, on the other hand, contends that there is no evidence that the Claimant received incorrect information from Mr. Cantanese, or anyone else in the Carrier's office in Milwaukee. With respect to the Ore Division, they note there were in fact, no junior employees working. They acknowledge that the Claimant submitted a copy of his phone bill showing one call to Escanaba on August 19 and two calls to Milwaukee on August 22. They also note that while the number listed on the bill for the Milwaukee calls was to the clerk's office, the call to Escanaba was to the local Railroad Retirement Board. Based on this, they suggest that the

Claimant had already decided that he was not going to exercise his seniority, but would determine what his unemployment benefits would be. They also maintain, that in light of the fact that the Claimant was senior to approximately 150 employees who were working at that time, it is unlikely that he would have been given this information.

In this case, the Board is faced with a factual dispute which cannot be resolved with sufficient certainty to sustain the claim. The fact that the Claimant's phone bill shows calls to Milwaukee tends to support his claim that he was told there were no junior employees working, but the credibility of his statements is diluted significantly when the documentation of his supposed call to the Carrier's Escanaba facility is obviously false. The Union also speculates that the Grievant would have no other reason to call the clerk's office in Milwaukee. While this carries some weight, it is equally valid to speculate, as the Carrier does, that it would be difficult to erroneously respond to the Claimant's question when such a large number of junior employees were working.

In view of these conflicts in evidence, the Board cannot make the necessary and requisite factual findings to sustain or deny the claim. We have no alternative, except to dismiss the claim.

AWARD

In view of the foregoing, the claim is dismissed.



Gil Vernon, Chairman



H. G. Harper, Employee Member



Barry E. Simon, Carrier Member

Dated:

June 17, 1985