

Parties  
to the  
Dispute

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

vs.

CONSOLIDATED RAIL CORPORATION

Case No. 28

Award No. 26

STATEMENT OF CLAIM

The Carrier has violated the Current M.W. Agreement, specifically Rules 4-E-1, 4-E-2 and the March 4, 1976 Implementing Agreement, when they failed to allow this employe to work at the Derailment at Central Avenue on No. 1 Branch, South Kearny, New Jersey; but instead used contractors and employes from other Sub-Divisions to perform work on the following listed dates:

October 12, 1979 - Used contractors and Erie Lackawanna employes - from 3:30 p.m. until 6:30 a.m.  
October 13, 1979 (15 hours punitive time);

October 13, 1979 - Used contractors and Lehigh Valley employes - from 7:00 a.m. until 9:00 p.m.  
(14 hours punitive time);

October 15, 1979 - Used junior employe from another Sub-Division working as EWE - from 3:30 p.m. until 11:30 p.m. (8 hours punitive time);

October 16, 1979 - Used junior employe from another Sub-Division working as EWE - From 3:30 p.m. until 11:00 p.m. (7½ hours punitive time);

work, by advertisement, which accrues to this Claimant.

Therefore, Carmine J. Cifelli - EWE - being qualified and available, and having requested this work, should be compensated for Forty-four and one-half (44½) hours, at the appropriate rate of pay as an EWE, for Carrier's refusal to allow this employe work which he ordinarily and customarily performs.

OPINION OF THE BOARD

Claimant C. J. Cifelli (retired) was at the time of the incidents involved here a Burro Crane Operator at Meadow Yards in South Kearny, New Jersey. On October 12, 13, 15, and 16, Carrier used employes other than Claimant to perform certain work at a derailment site. Claimant contends that he should have been used at the location and is requesting 44½ hours of pay as compensation for not being properly assigned to the work. Claimant contends that he was fully qualified to perform the work, was available, and had requested the work.

Carrier denies the claim on all counts. It contends that Claimant was not qualified to operate the specialized equipment utilized and that he did not request to be allowed to work on the wreck site.

This Board has reviewed the record and must conclude that Petitioner has not carried its burden of proof in this case.

Mere assertion of facts are not sufficient to justify a claim under these conditions. This Board is sensitive to Claimant's seniority with Carrier. As a senior employe, he is in line for extra work if qualified. No proof of his qualifications have been presented. Based on the information available to it, Carrier concluded that Claimant was not qualified to operate a 25-ton D-rated crane or a D-8 caterpillar bulldozer, the two pieces of equipment in question. This Board has no basis on which to decide otherwise.

AWARD

The claim is denied.

*R. E. Dennis*  
 R. E. Dennis, Neutral Member

*J. Dodd*  
 J. Dodd, Employe Member

*R. O'Neil*  
 R. O'Neil, Carrier Member

1-30-86  
 Date of Adoption