

PROCEEDINGS BEFORE PUBLIC LAW BOARD NO. 3781

AWARD NO. 11

Case No. 11

Referee Fred Blackwell

Carrier Member: R. O'Neill

Labor Member: W. E. LaRue

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

vs.

CONSOLIDATED RAIL CORPORATION

STATEMENT OF CLAIM:

Claim of the Brotherhood (CR-710) that:

- (a) The Carrier violated the effective Agreement, particularly Rule 3, Sections 3 and 4, when on April 27, 1983, it recalled from furlough an employee junior to Claimant L. Venable.
- (b) The Carrier further violated the Agreement, particularly Rule 26(a), when it failed to respond within the time limits imposed upon the parties when Division Engineer failed to produce a response to the original claim.
- (c) The Claimant be compensated for all wage loss suffered, including all overtime working by said junior employee, that the Claimant was denied by this improper recall.

FINDINGS:

Upon the whole record and all the evidence, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted by agreement and has jurisdiction of the parties and of the subject matter.

OPINION

After due study of the whole record on the confronting claim, inclusive of the parties arguments in support of their positions in the case, the Board concludes and finds that the

claim fails for lack of necessary proof and it is thus not necessary to address the time limit objections of the parties.

The requirement of proof exists for the protection of both parties as well as the Board. Properly viewed, it is not unreasonable or unduly burdensome. If a claim is sufficiently important to warrant this Board's consideration and critical facts are in dispute, it is certainly incumbent upon the Claimant to produce sufficient evidence to support his version of the facts on which he relies. We appreciate that it is sometimes difficult in these situations to obtain evidence, and our demands are tempered by that consideration. It is not necessary that the proof comply with technical formal requirements or that its volume be great, but it should be sufficiently specific and ample to establish the claim and enable the Board to resolve the conflicts.

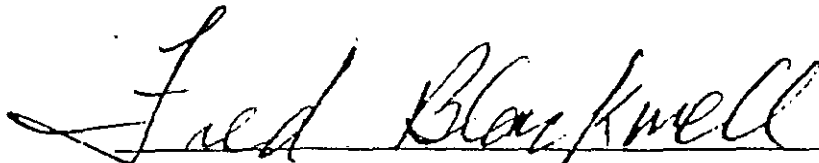
The employees have the burden of showing a violation, and, although, we limit our findings to this particular record, we are unable to find that the employees have established their claim by an adequate evidentiary showing.

Claim dismissed.

AWARD:

Claim dismissed.


BY ORDER OF PUBLIC LAW BOARD NO. 3781.

A handwritten signature in cursive script that reads "Fred Blackwell". The signature is written in dark ink and is positioned above a horizontal line.

Fred Blackwell, Neutral Member

3781-11


R. O'Neill, Carrier Member


W. E. LaRue, Labor Member

Executed on April 19, 1989

CON-3781\11-11.405