

PROCEEDINGS BEFORE PUBLIC LAW BOARD NO. 3781

AWARD NO. 13

Case No. 30

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-1455) that:

(a) The Carrier has violated the current Scheduled Agreement, effective February 1, 1982, as amended, particularly Rule 3, Section 3, when it failed to award the position of Class 2 Backhoe Operator, as advertised on the Youngstown Division Advertisement 193, dated September 12, 1984, to Claimant P. Castrilla, but instead abolished the position without award.

(b) The Claimant shall be allowed a seniority date of October 1, 1984, on the Youngstown Division Class 2 Machine Operator's seniority roster.

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

This dispute arises from the Carrier's September 17, 1984 Youngstown Division Advertisement of a Class 2 Backhoe Operator position, and the subsequent abolishment of said position.

The claim is that the Carrier's actions respecting the advertisement violated the applicable Schedule Agreement and that as a result, the Carrier should be required to place the Claimant on the Class 2 Seniority Roster effective October 1, 1984.

The pertinent facts are that after an erroneous posting of the subject position on September 12, 1984, the Carrier corrected the advertisement to reflect a posting date of September 17 or 18, 1984; this resulted in a closing date on the advertisement of the position of September 24, and an award date on the position of October 1, 1984. By notice dated September 26, 1984, the Carrier abolished the Class 2 Backhoe Operator position, effective September 28, 1984.

The position of the Organization is that these circumstances show a Carrier violation of Rule 3, Section 3 (e), which requires an advertisement to be cancelled within seven (7) days from the date of posting; and that in consequence, the Carrier should have awarded the position to the Claimant under Rule 3, Section 3 (d), which requires an award to be made and posted within seven (7) days after the close of the advertisement.

The position of the Carrier is that the Backhoe position was not due to be awarded until October 1, 1984 under the applicable rules, and that since the position was abolished on September 26, effective September 28, 1984, which was prior to the award date, the Carrier's actions in the matter were not violative of the rules cited in support of the claim.

P.L. Board No. 3781 - Award No. 13, Case No. 30

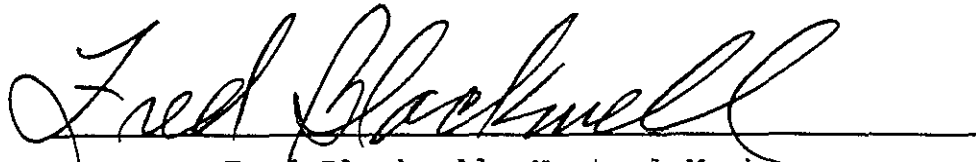
After due study of the foregoing, and of the record as a whole, the Board finds that the Carrier's actions do not appear to have violated the Agreement. After deciding that the Backhoe position had been advertised in error, the Carrier could have dealt with the problem by cancelling the advertisement or, alternatively, by abolishing the Backhoe position advertised. The Carrier chose the abolishment alternative and thus Rule 3, Section 3 (b), (d), and (e), did not come into play. Further, since the job abolishment was effected before the position had been awarded to any Employee, the requirement of notice of a job abolishment was not applicable.

In view of the foregoing, and on the whole record, the claim will be denied.

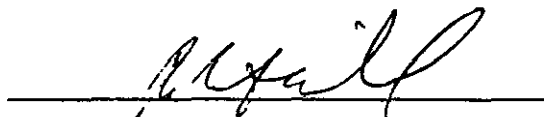
AWARD:

Claim denied.

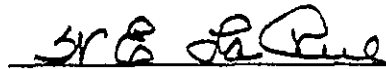
BY ORDER OF PUBLIC LAW BOARD NO. 3781.



Fred Blackwell, Neutral Member



R. O'Neill, Carrier Member



W. E. LaRue, Labor Member

Executed on 5-28, 1986.