

PROCEEDINGS BEFORE PUBLIC LAW BOARD NO. 3781

AWARD NO. 24

Case No. 44

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-1568) that:

(a) The Carrier has violated Rule 3, Section 3 (d) and (e) of the current Scheduled Agreement, and other pertaining rules as amended, when on March 25, 1985, it failed to make awards effective as prescribed by the rules.

(b) The Carrier will compensate Claimant employees awarded positions advertised under Nos. UC-101 and UC-1001 eight (8) hours pay per man for April 8, 9, 10, 11, and 12 for the five day per week gang and ten (10) hours per day per man for April 8, 9, 10, 11, 1985, for the four day per week gang, at the appropriate rate of pay.

(c) The Carrier will compensate Claimant employees awarded positions advertised under Nos. SM-100, TK-817, SW-1, SX-811, CAT-812, eight (8) hours pay per day per man for March 25, 26, 27, 28, 29, April 1, 2, 3, 4, and 5, 1985 for the men awarded positions in five day per week gangs and ten (10) hours per day per man for March 25, 26, 27, 28, April 1, 2, 3, and 4, 1985 for the men awarded positions in four day per week gangs at the appropriate rate of pay.

FINDINGS:

Upon the whole record and all the evidence, after March 19, 1987 hearing at the National Mediation Board, Washington, D. C., 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

The issue presented by the confronting record is whether Claimants awarded Gang jobs under job bulletins which closed on March 18, 1985 were entitled under Rule 3 of the Schedule Agreement to start the job assignment seven (7) days after the close of the bulletin, that is on March 25, 1985, as contended by the Organization; or whether it was permissible for the Gangs to start work on April 8 and 15, 1985, as contended by the Carrier?

The pertinent facts of record are that new positions for seven Gangs were advertised on the Columbus Division by Bulletins dated March 11, 1985. The closing date under the bulletins was Monday, March 18, 1985.

By Notice dated March 25, 1985, the Carrier posted the names of the successful applicants over the legend "Effective: April 8, 1985."

Approximately 75% of the Gang positions were awarded to furloughed Employees who had the status of automatic bidders under Rule 3 (c); the remainder of the awardees were Employees who were in service and under pay during the period in question.

Five (5) of the seven Gangs started work on April 8, 1985. The members of the other two Gangs were notified by phone on April 3 and 4, 1985, that their assignments would not start until April 15, 1985. The Carrier states that the April 15 start for two of the Gangs was because of operational problems in connection with Camps not being ready and the equipment not being place for the start-up of the season.

The claim is governed by Rule 3 (d) reading as follows:

"RULE 3 - SELECTION OF POSITIONS

Section 3. Advertisement and Award

(d) Awards will be made and bulletin announcing the name of the successful applicant will be posted within seven (7) days after the close of the advertisement.

This Rule shall not be construed so as to require the placing of employees on their awarded positions when properly qualified employees are not available at the time to fill their places, but physical transfers must be made within ten (10) days."

The Board finds that the first paragraph in Rule 3 (d) means that the job assignments resulting from awards will start not later than "seven (7) days after the close of the advertisement." Here, the involved bulletin closed on March 18, 1985 and hence the job assignments should have commenced on March 25, 1985 as asserted by the Organization.

The claim is thus meritorious and will be sustained. However, the Employees who were in service and under pay are subject to the ten (10) day deferment of physical transfer provided by the second paragraph of Rule 3 (d). The award of compensation would be limited to the period beginning eleven (11) days after March 25, 1985 and would in all events provide only for the wage differential, if any, between their prior and award positions.

In view of the foregoing, the claim is deemed meritorious on the confronting record and will be sustained to the extent indicated hereinbefore. For a like construction of a similar rule, see Decision No. 318 (2-11-41) involving The Pennsylvania Railroad-Long Island Railroad and the Brotherhood of Maintenance of Way Employees.

AWARD:

The Carrier within thirty (30) days shall compensate the Claimants as per this Opinion.

BY ORDER OF PUBLIC LAW BOARD NO. 3781.



Fred Blackwell, Neutral Member



R. O'Neill, Carrier Member



W. E. LaRue, Labor Member

Executed on March 20, 1989.

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