

PROCEEDINGS BEFORE PUBLIC LAW BOARD NO. 3781

AWARD NO. 26

Case No. 49

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-1674) that:

- (a) The Carrier has violated Rules 3 and 4 of the current Scheduled Agreement, and other pertaining rules as amended, when on April 29, 1985, it failed to recall Trackman M. K. Bales to a temporary vacancy on Gang SC-810, but instead recalled a junior trackman, D. Bolin, to the position.
- (b) The Claimant, being the senior qualified trackman and being available, shall now be compensated at the appropriate rate of the trackman position for ten (10) hours each day on April 29 and 30, May 1, 2, 6, 7, 8, 9, 13, and 14, 1985, and thereafter, until the Claimant is placed on the position for which his seniority allows.

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

This case arises from the claim of furloughed Trackman M. K. Bales who alleges that the Carrier mishandled his recall rights

relating to temporary vacancies in Trackman positions on Camp Car Gang SC-810, headquartered at Sharonville, Ohio.

The Claimant requests compensation for wage loss resulting from the Carrier's alleged mishandling of his recall rights.

The Carrier asserts that in April 1985 the Assignment Clerk attempted to call the Claimant for a temporary vacancy, but the Claimant could not be reached; and that the Clerk then called the next junior Employee who accepted the temporary vacancy and reported for work on April 29, 1985.

From review of the whole record the Board notes that the Carrier's May 22 and July 10, 1985 correspondence concerning the circumstances in which Claimant was called, contain conflicting statements of fact. The May 22 letter states in pertinent part the following:

"...on April 26, 1985, attempt was made to call Mr. Bales on the phone for temporary vacancy, per the Agreement." and that "[h]e could not be reached by phone".

The Carrier's July 10 letter states in pertinent part the following:

"...On April 29, 1985 the Division Engineer's clerk attempted to telephone the claimant, but discovered that he did not have a telephone number listed where he could be reached...

\* \* \*

Because the claimant did not have his telephone number on file on April 26th, he was not available for the vacancy, and, therefore, forfeited his right to the vacancy."

The Board further notes that Rule 3 - SELECTION OF

POSITIONS / Section 4. Filling Temporary Vacancies - provides in paragraph (a) that in filling vacancies pending assignment, the senior qualified furloughed employees in the seniority district shall be offered the opportunity to return to service.

In view of the foregoing, and based on the record as a whole, the Board finds that the Carrier's handling of the Claimant in this case was unsatisfactory and unjustified and that his claim is meritorious. Accordingly, the claim will be sustained.

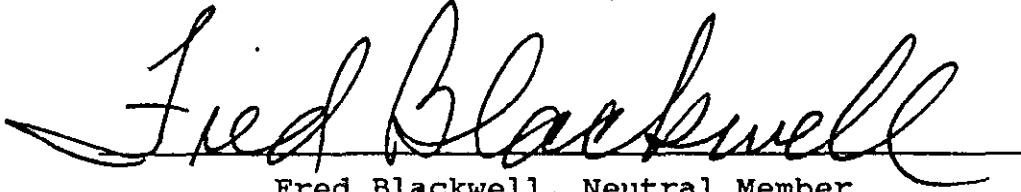
As regards compensation, the Carrier submits that if the U.S. mail had been used to notify the Claimant of the temporary vacancy, the letter would have been mailed on April 29 and received by the Claimant approximately two (2) to four (4) days later. The Board does not concur with this proposition; it is technical and lacks substance and merit. The Carrier's May 22, 1985 letter indicates that the Carrier had knowledge of the vacancies on April 26, 1985. Therefore, the claim for compensation will be sustained from April 29, 1985 til the date of the award of the permanent position on May 13, 1985.

AWARD:

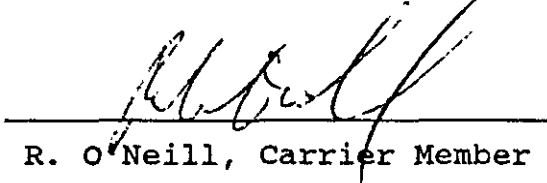
Claim sustained. The Carrier shall compensate the Claimant within thirty (30) days from today's date as per the Opinion.

BY ORDER OF PUBLIC LAW BOARD NO. 3781.

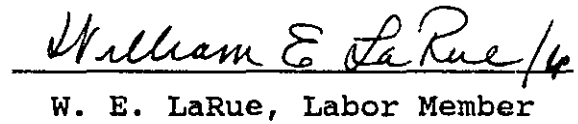
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Fred Blackwell, Neutral Member



R. O'Neill, Carrier Member



W. E. LaRue, Labor Member

Executed on May 16, 1989

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