

PROCEEDINGS BEFORE PUBLIC LAW BOARD NO. 3781

AWARD NO. 3

Case No. 3

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-353) that:

(a) The Carrier violated the Rules Agreement effective February 1, 1982, particularly Rule 4, Section 2, when it prohibited Claimant Russell Irwin to displace junior employees in the exercise of his contractual right on December 20, 1982.

(b) Claimant Irwin's record be corrected to reflect that displacement was allowed as of December 20, 1982.

(c) Claimant Irwin be reimbursed any loss of wages as a result of the Carrier's failure to allow him to displace said junior employees on December 20, 1982.

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 is a qualification dispute arising from the Claimant's protest of the Carrier's action in December 1982, whereby the Carrier refused the Claimant's request to displace to

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positions held by any one of three junior Employees due to the Carrier's determination that the Claimant was not qualified for the positions involved in his request.

Under date of February 4, 1983, the Claimant filed three (3) separate claims in connection with the Carrier's disqualification action which have been presented in Cases Nos. 2, 3, and 4. This dispute involves Case No. 3, relating to Mr. Al Amburg, who, at the time of the attempted displacement, held the position of Assistant Foreman on the Selkirk Sub-division. Case No. 2, relating to Mr. Frank Fisherauer, incumbent of the position of Track Foreman/Switch Inspector, has been disposed of by a denial ruling in Case No. 2, Award No. 2. Case No. 4, relating to Mr. Vincent Ferrero, Boom Truck Operator, is considered in subsequent Award No. 4.

The record in this case reflects that the incumbent of the Assistant Foreman position on the Selkirk Sub-division held by Mr. Amburg, had duties which included the preparation of payroll timesheets; that the Claimant was offered the opportunity to demonstrate his ability to apply the new payroll accounting system that had been implemented in December 1982; and that the Claimant refused to undergo this test.

The Organization asserts that the Carrier's proffer of a test in these circumstances was improper, because the duty of keeping, recording, and turning in time is performed by the Gang Foreman, not the Assistant Foreman; and that the Claimant should

have been assigned to the job of Assistant Foreman and allowed to learn the accounting system under the direction of the Foreman.

After due study of the foregoing and the whole record, inclusive of the parties' arguments in support of their respective positions in the case, the Board concludes that the record does not establish that the Carrier's disqualification of the Claimant from the position of Assistant Foreman was unreasonable or arbitrary. If indeed the Gang Foreman, not the Assistant Foreman, performed the duty of administering the payroll accounting system, the posture of the case would be different. However, as the record stands, the claim that the Foreman had the duty of administering the payroll accounting system is a mere allegation; it is not supported by credible, persuasive evidence and thus there is no basis for concluding that the Carrier required the Claimant to possess a qualification involving payroll accounting which did not apply to the position of Assistant Foreman.

Moreover, in circumstances in which the demonstration of his ability to handle the payroll was the single factor standing between the Claimant being found qualified or not qualified for the position of Assistant Foreman, the Claimant refused the Carrier's offer of an opportunity to undergo a test to demonstrate his ability respecting the payroll accounting duty. Therefore, the Carrier's disqualification of Claimant from the subject position was the direct consequence of the Claimant's refusal to take the proffered test, and there is no evidence of record on