

PROCEEDINGS BEFORE PUBLIC LAW BOARD NO. 3781

AWARD NO. 39

Case No. 84

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-2283) that:

- (a) The Carrier's refusal to allow Foreman J. A. Patterson to continue to work on the Foreman's position following his initial assignment on November 11 and 12, without proper notice as provided by Rule 3, Section 4(a), is in violation of the Schedule Agreement.
- (b) Claimant Patterson shall be compensated for eight (8) hours each day on November 13, 14, and 15, 1985, at the appropriate rate of the Foreman position in Advertisement No. 59, dated November 4, 1985, and awarded effective November 18, 1985.

FINDINGS:

Upon the whole record and all the evidence, after September 23, 1988 hearing in 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 claim is based on the allegations of Claimant J. A. Patterson that the Carrier violated the five (5) day notice requirement of Rule 6 of the Schedule Agreement by its action of

placing him in a temporary Foreman vacancy on November 11 and 12, 1985, which arose from the advertisement of a Foreman position for the I & C Crossing Gang at Urbana, Ohio, and then advising him on November 13 that he could no longer work the position. The Claimant requests compensation for lost time on November 13, 14, and 15, 1985.

The Carrier asserts that no rule violation is shown of record in that it was discretionary, not mandatory, under the governing rules for the Carrier to fill the temporary vacancy, and that Rule 6 did not apply to the situation.

* * * * *

After due study of the whole record, inclusive of the submissions presented by the parties in support of their positions in the case, the Board concludes and finds that the record does not establish a rule violation respecting the Carrier's handling of the Claimant.

The Carrier had discretion under Rule 3, Sections 3. and 4., of the Schedule Agreement to fill the vacancy on an advertised position temporarily pending assignment; however, the Carrier is not required to do so, because the rule is cast in the discretionary phraseology of a "vacancy may be filled temporarily pending assignment". Hence, the Carrier's decision to assign the Claimant to the temporary foreman vacancy on November 11 and 12, 1985, did not obligate the Carrier to continue the Claimant in the temporary vacancy pending its assignment under the job bulletin. In addi-

tion, the Claimant at no time acquired incumbent status on the Foreman position under advertisement and the position was not abolished. In these circumstances, it cannot be said that the five (5) day notice of abolishment of a position required by Rule 6 was applicable.

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

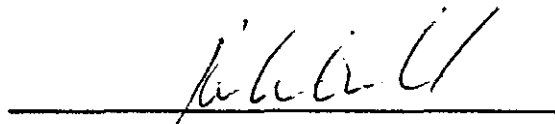
AWARD:

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 July 10, 1989

CON-3781\39-84.619