

PROCEEDINGS BEFORE PUBLIC LAW BOARD NO. 3781

AWARD NO. 40

Case No. 99

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-2647) that:

- (a) The Carrier has violated Rule 4, Section 5, as amended, when junior employee F. O. Kraus, a regional B&B Mechanic, was recalled to service on December 16, 1985, instead of senior employee Angelo M. Catenaro, also a B&B Mechanic.
- (b) Claimant Angelo M. Catenaro shall be compensated eight hours for each date the junior employee worked, including overtime, and also additional health and welfare to cover the period.

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 arises on the basis of allegations by Claimant B & B Mechanic Catenaro that the Carrier improperly recalled junior Employee F. O. Kraus to service on December 16, 1985 instead of recalling the Claimant. The Organization asserts that the Car-

rier's action was violative of Rule 4, Section 5. of the Schedule Agreement, and requests that the Carrier be directed to compensate the Claimant for specific claim dates in December 1985 and January 1986.

The Carrier asserts that Employee Kraus was brought back to work in the sole capacity as Crane Operator driving H-Pile for the Interregional B & B Department on the Western Region, and on this basis requests that the claim be denied.

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After due study of the record as a whole, inclusive of the submissions presented by the parties in support of their positions in the case, the Board concludes and finds that the claim is shown by the record to be meritorious and accordingly, the request for compensation will be sustained.

The record reflects that the Carrier's position that Employee Kraus was recalled as a Crane Operator, was challenged by the Organization's assertion that such statement was error in that no position of Crane Operator is carried on the Interregional B & B roster; that Rule 1, Track Department, Section B. 3 lists the Pile Driver among the machines which are operated by Employees on the Machine Operator rosters; and that junior Employee Kraus does not have seniority as a Machine Operator.

The record further reflects that the Carrier made no meaningful response to these challenges by the Organization, but merely stated that Employee Kraus was the senior qualified Employ-

ee available, and that the Agreement does not restrict the Carrier from using a B & B Mechanic to operate a crane.

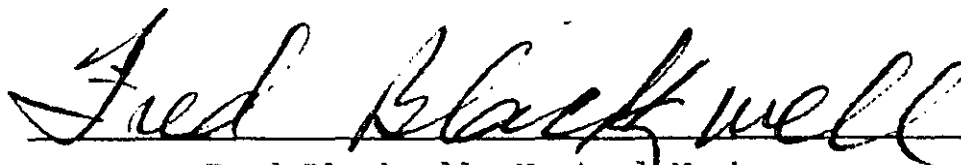
In these circumstances it appears to the Board that the Organization made a credible challenge to the Carrier's affirmative defense assertion that Employee Kraus was recalled solely as a Crane Operator; and that the Carrier failed to advance a credible, documented factual response to the challenge. This did not meet the Organization's challenge that Employee Kraus was not recalled as a Crane Operator, but was recalled to perform the work of a B & B Mechanic, and consequently, the Carrier's affirmative defense in this regard is not supported by the record.

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

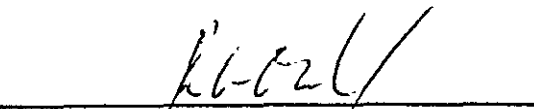
AWARD:


Claim sustained. The Carrier shall within thirty (30) days from the date hereof compensate the Claimant for time lost on the cited claim dates in December 1985 and January 1986.

BY ORDER OF PUBLIC LAW BOARD NO. 3781.



Fred Blackwell, Neutral Member


R. O'Neill, Carrier Member


W. E. LaRue, Labor Member

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Executed on July 10, 1989

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