

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6399

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

NORFOLK SOUTHERN RAILWAY COMPANY

)
) Case No. 3
)
) Award No. 3
)

Martin H. Malin, Chairman & Neutral Member
J. Dodd, Employee Member
D. L. Kerby, Carrier Member

Hearing Date: January 23, 2004

STATEMENT OF CLAIM:

Claim on behalf of T. P. Maher, et al., for 210 straight time hours worked by Eastern Region seniority district employees at Buckeye Yard in Columbus, Ohio of the Northern Region seniority district from February 25 to April 1, 2002.

(Carrier File: MW-FTW-02-01-A-LM-133)

FINDINGS:

Public Law Board No. 6399, upon the whole record and all the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute herein; and, that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

Beginning February 25, 2002, and continuing through April 1, 2002, Carrier assigned a smoothing gang which was established on the Eastern Seniority Region and whose members had no seniority on the Northern Seniority Region to perform work at Buckeye Yard within the Northern Seniority Region. Claimants are employees who hold seniority on the Northern Seniority Region.

Our holdings in Case No. 2, Award No. 2 control the instant case. In Case No. 2, Award No. 2, we held that Rule 18 authorizes transfers across seniority boundaries for temporary service. We further held that transfers that last up to thirty days in duration are presumptively for temporary service while transfers that last more than thirty days in duration are presumptively suspect. In the latter case, Carrier must come forward and demonstrate why such a transfer was for temporary service despite its duration.

As in Case No. 2, Award No. 2, we are presented with transfers that lasted more than

thirty days in duration. In Case No. 2, Award No. 2, Carrier came forward with an explanation that we accepted because it was not contested on the property. The record in the instant case contains no explanation that would justify a conclusion that the transfers were for temporary service despite their lasting more than thirty days. Accordingly, the claim must be sustained.

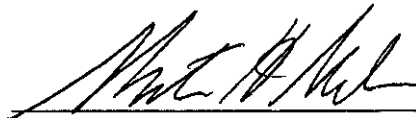
Therefore, we turn to the question of remedy. Carrier contends that no monetary remedy is appropriate because Claimants were fully employed during the period in question. However, numerous awards establish that where Carrier assigns employees work in derogation of the seniority rights of the Claimants, the Claimants are entitled to monetary compensation for the lost work opportunities. Such is the case here. However, during handling on the property, Carrier asserted that Claimant Gandy was on vacation on February 27, 2002, and therefore unavailable for work on that date. The Organization did not dispute that Claimant Grandy was on vacation on that date; therefore we accept this as fact and hold that Claimant Grandy, due to his unavailability on February 27 is not entitled to monetary compensation for that date. Additionally, during handling on the property, Carrier asserted that on eight claim dates an individual who the Organization asserted performed the disputed work was actually on vacation. Again, the Organization did not dispute the asserted facts and we must accept them. Therefore, in calculating the compensation due, the work allegedly performed by the individual who was on vacation must be excluded. Subject to these caveats, the claim for monetary compensation is sustained.

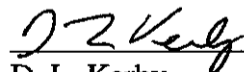
AWARD

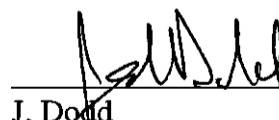
Claim sustained in accordance with the Findings.

ORDER

The Board, having determined that an award favorable to Claimant be made, hereby orders the Carrier to make the award effective within thirty (30) days following the date two members of the Board affix their signatures hereto


Martin H. Malin, Chairman


D. L. Kerby,
Carrier Member


J. Dodd
Employee Member

Dated at Chicago, Illinois, April 19, 2004.