

PUBLIC LAW BOARD NUMBER 1837

Case Number 53
(MW-FST-76-4)

PARTIES TO DISPUTE:

Norfolk and Western Railway Company

and

Brotherhood of Maintenance of Way Employees

STATEMENT OF CLAIM:

1. The carrier violated the provisions of the Effective Working Agreement of the New York, Chicago and St. Louis Railroad Company (Nickel Plate Road), dated February 1, 1951, when it recalled junior furloughed Section Laborer Simon Arellano to service on April 5, 1976, whose seniority date is July 17, 1974, on Section 22 with headquarters at Fostoria, Ohio.
2. The carrier failed to recall senior furloughed Section Laborer Dan Mock on April 5, 1976, whose seniority date is May 7, 1973, to said position at Fostoria, Ohio.
3. Claimant Dan Mock be compensated at his regular rate of Section Laborer beginning April 5, 1976 up to May 17, 1976, for all monies loss suffered by him.

FINDINGS: This Board, upon the whole record and all evidence, finds that:

The carrier and the employee involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as amended.

This Board has jurisdiction over the dispute involved herein.

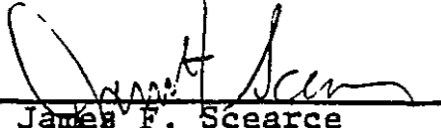
OPINION:

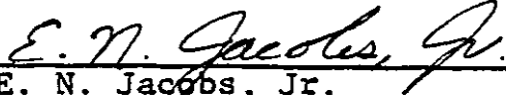
The Claimant held seniority on Section 22 at Fostoria, Ohio and concededly was more senior than the other Section Laborer (Arellano) involved in this case. Both employees had been furloughed and had properly complied with applicable provisions of the Agreement insofar as indicating their interest for recall. In April of 1976 a vacancy for Section Foreman occurred on Section 22 which was filled by moving employees up, thus creating a vacancy for a Section Laborer. By seniority, the Claimant was entitled to first contact and offer. According to the Organization/Claimant, no such contact was received. The Carrier's explanation of events before the Board is at variance with the record presented. According to its presentation, several attempts were made and the Claimant finally contacted and offered the job, which he refused opting to wait for a permanent job closer to home; however, since this was a temporary job, the Claimant did not forfeit his seniority by the refusal. Rule 5 requires a return to duty on recall to a regular bulletined position as opposed to a temporary one -- less than 30 days in duration. In making the record, however, the Carrier's only reference to this matter was that calls were made to the Claimant's home without success and that the job was temporary in nature.

The facts presented augur against the Carrier's position here. It is unrefuted that the Laborer's job herein referred to actually extended from April 5, 1976 to May 17, 1976, thus making it more than the 30-day limitation for temporary jobs. This being the case, more than a mere telephone call was required to fill the job. We cannot settle the question as to whether telephone calls were actually made to the Claimant's home or not, but the eventual length of the disputed job obviates the claim of temporary. The Claimant is entitled to compensation for the time worked on the disputed position until such time that he might have returned to duty. Such compensation is offset by earnings or monies he may have received elsewhere.

AWARD:

The Agreement was violated; compensation is ordered as set out in the OPINION, to be paid within 30 days of receipt of this fully-executed AWARD.


James F. Searce
Neutral Member


E. N. Jacobs, Jr.
Carrier Member


William E. LaRue
Employee Member

Dated MARCH 24 1982 at Philadelphia Pa