

PUBLIC LAW BOARD NO. 1838

Award No. 36

Carrier File MW-WI-77-22

Parties Brotherhood of Maintenance of Way Employees
to and

Dispute Norfolk and Western Railway Company

Statement

of Claim: Claimant R. G. Looney requests pay for all overtime made by employees of Speno Ballast Cleaning Machine Gang during June and July, 1977, account not being furnished a bulletin of the cook's position on said gang so that he could place a bid for the cook's position in June, 1977.

Findings: The Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated March 1, 1976, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

The General Chairman filed the instant claim by letter of August 24, 1977, stating:

"We have been informed that during June and July, 1977, you used a machine operator to cook on Speno Ballast Cleaning Machine when you had R. G. Looney on Devon section who had cooking seniority rights.

This is one of the unpleasant experiences that comes from not properly distributing bulletins. This cooking position came out unassigned and R. G. Looney should have been used. He would have bid on the job if he had been given a bulletin.

We are requesting that R. G. Looney be paid the overtime that was made by machine operator Doyle Johnson while cooking on Speno. This time will show on time sheets which you have on file in your office.

Our entire Agreement supports seniority, so it is useless to cite any particular rule."

Carrier asserts that the claim is so vague, indefinite and lacking in specificity that it fails to state a cause of action upon which a decision can be reached; and hence must be dismissed accordingly; that Roadmaster J. H. Brown specifically asked Claimant if he desired to take the position as cook and he declined to do so and that he was asked by Roadmaster Brown on two separate occasions thereafter with the same response. Until finally, on July 22, 1977, he agreed to take the position if Roadmaster Brown would cut him off or release him when the Speno left the Pocahontas Division.

In addition Carrier asserts that the Organization failed to cite a rule in support of their position. Awards in support of Carrier's position were also cited.

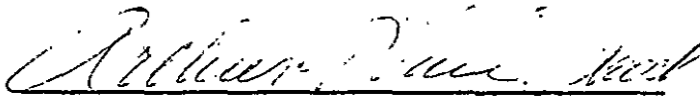
The Board finds that there is merit to the instant claim. Here, Carrier used an employee without seniority to perform the work of an assigned position to which Claimant had seniority rights. Also, Claimant was not given copy of the bulletin concerning the position in question. Further, the Claimant denied the allegation of Roadmaster Brown. Roadmaster Brown, in denying the claim under date of October 3, 1977, did not therein assert that he had offered the job to Claimant and that Claimant had refused. A belated assertion not contemporary with the claim loses its vitality and validity when, as here, denied and not thereafter substantiated. Consequently, in the circumstances, this claim will be sustained limited to this case.

Award: Sustained as per findings.

Order: Carrier is directed to make this Award within thirty (30) days of date of issuance shown below.


A. D. Arnett, Employee Member


G. C. Edwards, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued at Salem, New Jersey, September 30, 1980.