

Award No. 36
Case No. 36

Public Law Board 2203

PARTIES
TO
DISPUTE:

Brotherhood of Maintenance of Way Employees
and
Consolidated Rail Corporation

STATEMENT
OF
CLAIM:

"Claim of Horace J. Stragratonio, Jr., a furloughed Trackman, against Harry L. Nace, appointed to unadvertised position as Curve-Liner at Phillipsburg, N. J., on the former Penn Central."

FINDINGS:

Nace, a curve liner, was temporarily transferred from the Easton Seniority District to the Coxtan Seniority District where he was assigned as timekeeper for a rail gang. His last day of work before his transfer was November 5, 1976.

When on January 7, 1977, that gang was abolished, Nace accepted employment in a curve liner position headquartered at Phillipsburg, N. J., instead of returning to his former posi-

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tion which was headquartered at Bethlehem, Pa. During the period from November 6, 1976 to January 7, he did work in his regular curve liner position on November 11 and December 14 and 21.

While there may be some question as to whether seniority rights were actually forfeited under those circumstances, it is clear that Rules 2-g and 2-g-1 were violated. Nace did not return to his former position upon the expiration of the temporary transfer despite Rule 2-g's unambiguous requirement in that regard. Moreover, his temporary transfer extended for a period longer than 30 days in plain violation of Rule 2-g-1. The fact that he performed service in his curve liner position on three isolated days during the 60-day period does not call for a contrary conclusion.

This Board's function is to interpret the rules and not to pass upon their practicality or wisdom. Without question, the rules were breached in this case and it is appropriate for Petitioner to police and administer its collective bargaining agreement. The fact that claimant is not a qualified curve liner is irrelevant, therefore, insofar as the basic issue as to whether the rules have been violated is concerned. It is, however, an element to be considered in determining the extent of damages to be awarded.

We will sustain the claims for April 27 and 28 for the purpose of enforcing the rules and to serve notice upon

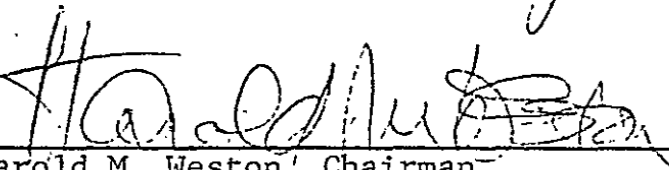
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the parties that rules to which they have committed themselves cannot be disregarded. To allow additional compensation in this case to an employee who has not been shown to be qualified to perform the work at issue would constitute a windfall; we will not allow compensation therefore for claim dates subsequent to April 29. On the basis of this record, we cannot pass upon the question of whether Nace's seniority was forfeited.

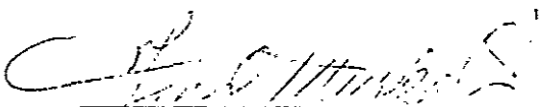
AWARD:

Claim sustained to the extent indicated in the last paragraph of Findings. Award to be effective within 30 days of its adoption.

Adopted at Philadelphia, Pa., *January 11, 1980.*
1979.


Harold M. Weston, Chairman


Carrier Member


Employee Member