

PUBLIC LAW BOARD NO. 2439

Award No. 20
Case No. 20

PARTIES Brotherhood of Maintenance of Way Employees
TO and
DISPUTE Southern Pacific Transportation Company

STATEMENT
OF CLAIM

1. That the Carrier violated the Agreement when it failed to allow Welder J.A. Espana, Jr., to displace the position of his choice pursuant to the rules of the Agreement and in so doing cause Claimant loss of compensation.
2. That the Carrier now compensate Claimant at Welder's rate for all wage loss suffered beginning May 31, 1979, including the difference in rate of pay between then applicable to the position of Grinder Operator beginning September 18, 1979 until Claimant was assigned to Welder's position on November 9, 1979."

FINDINGS

Upon the whole record, after hearing, 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 under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

Claimant, who had entered service of the Carrier, on July 17, 1970 as a Welder Helper was subsequently working as a Welder. In June 1974 he suffered a serious injury to his wrist. In April of 1976 his hand had recovered sufficiently to a point where he had at least partial strength in the hand and the physicians recommended that Claimant be returned to work on a restricted basis. He was therefore assigned as a Welder in the Rail Welding Plant at Tracy, CA where his difficulty with his wrist would not prevent adequate and safe performance. According to Carrier's records, on May 23, 1978, upon medical recommendation of Carrier's medical department, the initial restriction on Claimant's activities was amended limiting him to work for not more than forty to forty-eight hours per week for the next three months. He was reevaluated in September of 1978 by a physician and the medical restrictions were again amended due to difficulties in his left elbow. He was restricted to working no more than an eight hour day, five days

per week for the next six months. On December 27, 1978, after further medical evaluation, the medical department of Carrier recommended that Claimant could now work up to ten hours per day, five days per week. He was at that time, according to Carrier, restricted still to work at the Tracy Welding facility.

On July 31, 1979 Carrier's Chief Medical Officer further amended the restrictions with respect to Claimant's service so that he could work up to ten hours per day, fifty hours per week with no lifting over seventy-five pounds. This medical restriction permitted Claimant to work at other jobs than those limited to the Tracy Welding Plant. Claimant was contacted with this information on August 10, 1979.

Claimant's position at the Tracy Welding Plant was abolished on May 25, 1979. Upon his return from vacation Claimant attempted to displace a junior employee as a Welder in the field at Merced, CA but Carrier refused his displacement bid because of his medical restrictions. Following the notification on August 10, 1979, Claimant bid on a position as Grinder Operator. On September 10, 1979 Claimant was assigned to the position of Grinder Operator on a grinding gang and returned to work in that position on September 18. Subsequently, he made application for being assigned to welder's positions and was placed on the welders position effective November 9, 1979.

Carrier states that Claimant was working under medical restrictions on May 25 and May 30, 1979 which disqualified him from working at any location other than the rail welding plant at Tracy, CA. These restrictions were first imposed and accepted, according to the Carrier, on April 14, 1976. Carrier asserts that there was no violation of the Agreement when on May 30 they would not allow Claimant to displace as a Welder in the field by virtue of the medical restrictions under which he was working. In support of this position, Carrier makes the point, that there was no other work available to Claimant except that at the rail welding plant in view of his medical restrictions.

The Organization states that there was no evidence whatsoever that Claimant's physical condition would not allow him to work on any position other than the one in which Carrier

placed him at the welding plant. The Organization insists that there was no evidence of restrictions by Carrier's medical department subsequent to April 14, 1976. More significantly, according to the Organization, Rule 32 (c) was violated since there was no agreement between the Carrier and the Organization with respect to any limited duty activity. In short, the Organization alleges that Claimant was not put on notice of the physical limitations of his assignment. The Organization insists further that Claimant had no knowledge of the pending restrictions until the day he was not allowed to make the displacement of his choice.

Rule 32 (c) provides as follows:

"LIGHT DUTY, INCAPACITATED EMPLOYEES. (c)
By Agreement between the Company and the General Chairman or his authorized representative employees subject to the scope of this agreement who have been disqualified because of physical condition, from performing the full duties of their regular assignments, may be used to perform such light work within their capability to handle, as is or can be made available."

An examination of the record indicates that Carrier failed to inform either the Organization or the Claimant of his physical disabilities following his initial return to work. In fact, there is no evidence whatsoever of any restriction with respect to Claimant's service which was agreed to between Carrier and the General Chairman of the Organization. It is obviously incumbent upon the Carrier, at very minimum, to keep an employee informed of the nature of any restrictions upon his work activities. In this case, it was not done.

Notwithstanding the above there is no reason indicated in the record which prevented Claimant from asserting his seniority with respect to a Welder's position effective September 18, 1979. He should, obviously, at that time have been permitted to bump into a position which his seniority entitled him to since the significant restrictions on his activities had been removed. For this reason it is the Award of this Board that Claimant be made whole for the difference in pay between that of Grinder Helper, which he

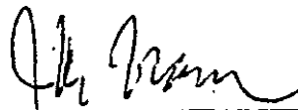
received effective September 18, 1979 until he was assigned as a Welder on November 9, 1979.

AWARD

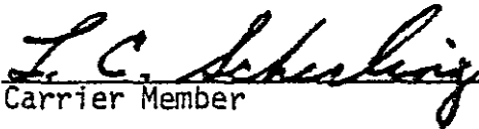
Claim sustained in part; Claimant will be made whole for the difference in pay between that of a Grinder Helper and a Welder for the period beginning September 18, 1979 and ending November 9, 1979.

ORDER


Carrier will comply with the Award herein within sixty (60) days from the date hereof.



I.M. Lieberman, Neutral-Chairman



Carrier Member



Employee Member

July 21, 1980
San Francisco, CA

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