

PUBLIC LAW BOARD NO. 2452

PARTIES Brotherhood of Maintenance of Way Employees
TO
DISPUTE: and
Western Maryland Railway Co.

STATEMENT Claim on behalf of C. H. Merritt for the difference
OF CLAIM: in pay between Trackman and B&B Chauffeur for fifteen
(15) workdays from May 1, 1978 through May 22, 1978.

FINDINGS: By reason of the Agreement dated June 14, 1979, and upon the whole record and all the evidence, the Board finds that the parties herein are employee and carrier within the meaning of the Railway Labor Act, as amended, and that it has jurisdiction.

During the claim date period, Claimant was a downgraded Chauffeur holding a position of Trackman at a lower hourly rate. Employees charge that a Chauffeur position vacancy existed from May 1, 1978 through May 22, 1978. Bulletin No. 10 dated May 1, 1978 advertised that position. Claimant submitted his bid and was awarded that position effective May 19, 1978. The award was not posted until May 22, 1978. Employees also contend that it is the policy on this property that the senior downgraded employee holding seniority in that class can request the right to fill the vacancy pending assignment after advertising.

Carrier denied the claim on August 14, 1978. The facts, as stated in Employees' claim, were affirmed. Carrier, however, wrote that "the vacancy was not filled temporarily by any employee. If the Carrier had elected to fill the position temporarily, then, in that event, the senior downgraded employee holding seniority in that class and requesting the position would have been used".

Carrier again denied the claim on November 16, 1978, affirming its position in August 14, 1978 and stating further that "Carrier made the determination not to fill the chauffeur's position pending assignment by bulletin, as provided by Rule 18(a) of the Agreement".

True, the Carrier is not obliged to fill a temporary vacancy pending assignment by bulletin. Rule 18(a) does not mandate such a temporary assignment. But if an employee performs the work of the position bulletined, then by Carrier's own acknowledgment, the senior downgraded employee holding seniority in that class and requesting the position should have been temporarily assigned pending the award of the position by bulletin.

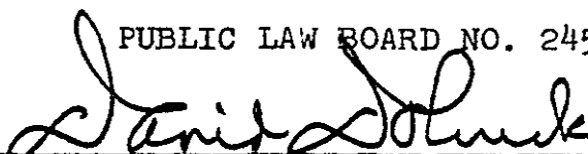
Employees allege that B&B Mechanic Simpson temporarily filled the Chauffeur position. While this specific allegation does not appear in the correspondence between the parties, there is sufficient representation that an employee other than the Claimant performed work of the position then vacant. Carrier's denials allege that the position was not temporarily filled. They do not state that no employee performed work of the Chauffeur position. No one was overtly temporarily assigned. An employee in a higher rated classification performed the work. That is equivalent to temporarily filling the position.


For the reasons herein stated, the Board finds that the Carrier violated the Agreement and that the claim has merit.

AWARD

Claim sustained. Carrier is directed to pay the claim within thirty (30) days of the date of this award.

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DAVID DOLNICK, Chairman and Neutral Member


W. C. COMISKEY, Carrier Member


WILLIAM E. LA RUE, Employee Member

DATED: April 16, 1980