

Award No. 1
Case No. 1

Public Law Board No. 2778

PARTIES
TO
DISPUTE:

Brotherhood of Maintenance of Way Employees
and
Baltimore and Ohio Railroad Company

STATEMENT
OF
CLAIM:

1. Carrier violated Rule 40(a) of the current Schedule Agreement dated October 1, 1968, when it assigned Trackman Andrew Capella instead of the senior qualified Trackman Fred Larson to operate a Class "B" machine.
2. Fred Larson be paid the rate of trackman and Class "B" operator from June 12 through July 7, 1978.

FINDINGS:

An employee junior to claimant was used to fill a temporary vacancy June 12 to 16, June 20 to 23, June 26 to 30 and July 3 to 7, 1978. According to Supervisor Mincer, claimant had been asked by Foreman Saliga to operate the machine and claimant refused. There is no statement from Mr. Saliga in the record or any specifics as to when claimant was asked to operate the machine.

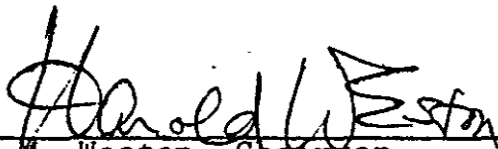
We will deny the claim for the initial period,

June 12 to 16, on the basis of Supervisor Mincer's statement. The claim for June 20 to 23 will be sustained since the statement is too general to provide a basis for a complete denial as to all claim dates; if, after a four-day hiatus, it became necessary to fill the vacancy again, claimant should have been called for that work. His refusal on June 11 or 12 did not mean that he was forever disqualified from performing the duty.


The claim for June 20 to 23 and July 3 to 7 will be denied; the record indicates that claimant was on vacation on those dates.

AWARD: Claim sustained for the period from June 20 to 23, 1978; denied as to all other dates. To be effective within 30 days.

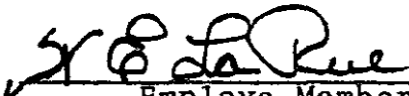
Adopted at Baltimore, Maryland, February 2, 1983.



Harold M. Weston, Chairman



Carrier Member



Employee Member