

PUBLIC LAW BOARD NO. 2960

AWARD NO. 67
CASE NO. 102

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employes

and

Chicago & North Western Transportation Company

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated Article VIII - Entry Rates - of the October 30, 1978 National Agreement when Trackman Jay Davidowski was not compensated at the regular Trackman's rate following completion of his first twelve months of employment. (Organization File 7T-2259; Carrier File 81-19-256)

(2) Claimant Jay Davidowski shall be compensated for the difference in pay between the entry rate of \$8.05 per hour and the regular Trackman's rate of \$8.95 per hour for all service rendered subsequent to July 14, 1981 continuing until such time as the rate of pay is corrected.

OPINION OF THE BOARD:

This Board, upon the whole record and all of the evidence, finds and holds that the Employee and the Carrier involved in this dispute are respectively Employee and Carrier within the meaning of the Railway Labor Act, as amended, and that the Board has jurisdiction over the dispute involved herein.

The basic facts are not in dispute. The Claimant was hired July 16, 1979. Pursuant to Section 1 of Article VIII of the October 30, 1978

National Agreement, the Claimant was initially paid only 90% of the rate of pay applicable to employees in his position. Article VIII basically provides that new employees be paid a reduced rate of pay for the first twelve (12) calendar months of service.

Before the Claimant had completed twelve months of service, he was furloughed in the fall of 1979. When the Grievant was recalled to service in July of 1981, the Carrier continued to pay him at the entry rate of pay.

Section 1-C of Article VIII is most pertinent here and states that time not worked for certain reasons does not count toward accumulating the twelve months after which the regular, full rate of pay would apply. It states in pertinent part:

"ARTICLE VIII - ENTRY RATES

"(c) Any calendar month in which an employee does not render compensated service due to voluntary absence, suspension, or dismissal shall not count toward completion of the twelve (12) month period."

• It is also noted as factual background that there were no junior employees in the Claimant's seniority "zone," but there were other employees working on other seniority zones in his seniority district. Rule 5, quoted below, established seniority zones and districts:

"Except for the Chicago Division, each Seniority District will be divided into Zones to be known as Zone A, Zone B, etc. An employee whose position is abolished or who is displaced through the exercise of seniority will not be required to displace into another zone of his seniority district, but will be privileged to do so."

The positions of the Parties are clear and straightforward and can be succinctly summarized. In this case, the Carrier argues that because work was available in another seniority zone in the Claimant's seniority

district, his absence was accordingly voluntary.

The Union relies on the section of Rule 5 which indicates an employee is not required to displace into another zone. Thus, in their opinion, his absence was not voluntary but due to his involuntary furlough and his inability to displace within his seniority zone. They point out that this issue was decided by referee Eischen in Award No. 84, Public Law Board 1844, involving the same parties and the same rules.

The Carrier characterizes Award 84 as erroneous and relies on another award between the parties involving Rule 5 and the employee's obligation to exercise seniority in his seniority district in order to qualify for protective benefits under the Oregon Short Line Conditions. The Carrier reads the Oregon Short Line decision as holding that an employee is not "deprived of employment" when he has seniority which he is able to exercise, and that exercising an employee's district seniority was a "normal exercise of seniority" which under the OSL conditions an employee is obligated to engage in.

The Board is faced here with what on the surface appears to be two conflicting interpretations of Rule 5. Rule 5 standing alone is reasonably clear. Its purpose relates to the obligations attached to seniority. As seniority rights have broadened in terms of geography and/or classes of service in the railroad industry, an employee's obligation to protect such service often broadens as well. The purpose of Rule 5 obviously was to some extent to limit an employee's obligation to protect service beyond their "seniority zone." The arbitration committee in the Oregon Short Line case found that Rule 5 did not limit an employee's obligation expressed in the Oregon Short Line Conditions to exercise

seniority in order to be protected. Public Law Board 1844 found that Rule 5 did overcome any implied obligation in Article VIII to exercise seniority beyond an employee's zone.

While this Board takes no particular exception to the decision in the Oregon Short Line case, we believe more weight must be given to the Public Law Board 1844 decision because it involves the same language as is in dispute here, whereas the Oregon Short Line case has critical distinctions in language and facts. Reconciling the two cases, it must be concluded that the Oregon Short Line language was intended in limited situations--which involve abandonment and abolishment of jobs and sometimes entire seniority zones--to override the exemption from seniority obligations expressed in Rule 5. It seems apparent in the opinion of the OSL Arbitration Committee that the exemption from seniority obligations in Rule 5 deserved less weight than the very specific language in Oregon Short Line Conditions.

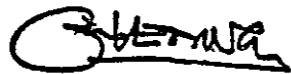
Some of the critical terms in Oregon Short Line Conditions for an employee to be considered displaced or dismissed relate to an employee being "deprived of employment" or being unable to obtain a job through the "normal exercise of seniority." Article VIII contains no such specific terms. The Carrier's position in essence asks us to read those terms into Article VIII when interpreting it relative to Rule 5. Rule 5 must be read to exempt certain seniority obligations in the normal course of employment. Abandonment and the wholesale elimination of jobs under the Oregon Short Line Conditions is hardly the normal course of employment. While the exemption of Rule 5 is not strong enough to overcome the specific language in the Oregon Short Line Conditions, it is broad enough to cover

any implied obligation in Article VIII to exercise all seniority rights in order not to be considered voluntarily absent from duty for the purposes of counting the twelve month period.


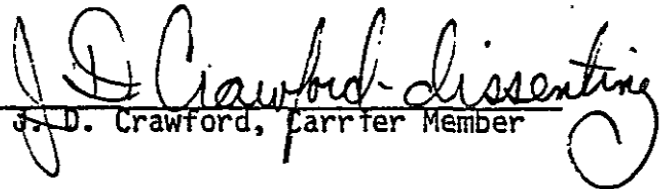
In view of the foregoing, the Claim will be sustained.

AWARD:

The Claim is sustained to the extent indicated in the Opinion. The Carrier is directed to comply with this award within thirty (30) days of its issuance.



Gil Vernon, Chairman


H. G. Harper, Employee Member
J. D. Crawford, Carrier Member

Dated: 2/14/85