

PUBLIC LAW BOARD NO. 3460

Award No. 18
Case No. 18

PARTIES
TO
DISPUTE

Burlington Northern Railroad Company
and
Brotherhood of Maintenance of Way Employees

STATEMENT
OF CLAIM

"Claim of the System Committee of the Brotherhood that:

- (1) Carrier violated the effective agreement on May 16, 1980, and each date thereafter when not permitting Sectionman E. R. Kyle to fill a Sectionman position in Stryker, Montana.
- (2) Claimant now be paid 90 minutes at the punitive rate and mileage allowance of 66 miles at 18 cents per mile each day commencing May 16, 1980 and continuous until claimant is assigned as laborer on the Stryker, Montana, section."

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.

On March 10, 1980, a bulletin advertised two section laborer positions headquartered at Whitefish, Montana, in District 6. This was claimant's own sub-district and he bid on said position and was awarded one of them by bulletin dated April 1, 1980. Subsequently, by letter dated April 9, 1980, the claimant requested the first available opening as a laborer at the Stryker section which was close to his home. Thereafter, on May 21, 1980, a temporary laborer vacancy occurred at Stryker and the vacancy was filled by the recall of the senior furloughed employee. During this time the claimant continued to work on his regular assignment at Whitefish, Montana, some 33 miles away.

On May 28, 1980, a claim was filed on behalf of Mr. Kyle with respect to the position at Stryker. The claim was received by the superintendent on June 2

and the claim was declined by letter dated July 30, 1980. The Organization challenged the declination indicating that it was beyond the sixty days provided for in Rule 42A of the agreement. Petitioner's position on this threshold issue is incorrect. The claim was not filed until received and, since it was responded to by Carrier by letter dated some 58 days following receipt of the claim, the response was indeed timely (Third Division Award No. 22799 and Second Division Award No. 5122).

With respect to the merits, petitioner insists that claimant had the right to the position at Stryker, rather than a junior employee. Petitioner relies on Rule 6 E(3) which provides as follows:

"If the employee as a result of force reduction exercises seniority to another home sub-district, he may file written request with the Roadmaster of his former home sub-district to be recalled to service when there is an increase in force thereon."

The Organization insists that claimant's relative length of service must be observed in the assignment in this instance. Claimant had an opportunity under the rules to work at a location near his residence and should have been awarded that position.

Carrier insists that claimant enjoyed no preferential right to transfer to the Stryker laborer position. Under Rule 9, it is clear the Carrier was required to recall the senior furloughed employee to fill the vacancy pending its bulletin and award. Rule 9, rather than Rule 19A, was relevant when the new position of more than 30 calendar days is established. In the case at bar, according to Carrier, there was no force reduction which affected claimant, nor was he displaced at the time. Furthermore, he was on an assignment in his own home sub-district and, therefore, was not in a position to request another position within that same home sub-district. In other words, Rule 6E(3) does not provide a means for transferring within the home sub-district which can only be accomplished on a bid.

There is no rule support for petitioner's position in this case. Rule 6E(3) is not applicable since it relates only to a situation in which there is a force reduction and an employee is in another sub-district rather than his home sub-district. Those circumstances were not applicable to the situation involved in

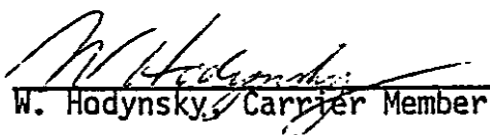
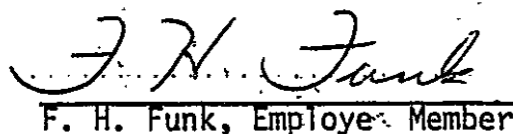
this dispute. Claimant was neither moved as a result of force reduction, nor was there a different sub-district involved. He was already assigned pursuant to a recently completed bid to a position within his home sub-district, even though some 33 miles from his residence. He had no right to request a transfer within that sub-district under the rules and, hence, the claim has no merit.

AWARD

Claim denied.



I. M. Lieberman, Neutral-Chairman


W. Hodynsky, Carrier Member
F. H. Funk, Employee Member

March 29, 1985