

PROCEEDINGS BEFORE PUBLIC LAW BOARD NO. 3781

AWARD NO. 1

Case No. 1

Referee Fred Blackwell

Carrier Member: R. O'Neill

Labor Member: W. E. LaRue

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

vs.

CONSOLIDATED RAIL CORPORATION

STATEMENT OF CLAIM:

Claim of the Brotherhood (CR-138) that:

(a) The Carrier violated the effective agreement by failing to correctly inform Trackman R. E. Orkman of his displacement rights when he was abolished on January 17, 1983.

(b) The Carrier further violated the agreement when it failed to allow Claimant Orkman to return to service after it was aware of extenuating circumstances involved preventing the Claimant from making timely displacement.

(c) The Claimant be returned to service with seniority and all other rights unimpaired and compensated for all time lost as a result of the Carrier's decision to remove the Claimant from all rosters.

FINDINGS:

Upon the whole record and all the evidence, 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 by agreement and has jurisdiction of the parties and of the subject matter.

OPINION

This case arises from the Claimant's appeal and protest of the Carrier's action of January 31, 1983, whereby the Carrier

terminated his employment status with the Carrier due to his failure to exercise his seniority in timely manner under Rule 4, Section 2. (b) of the applicable Agreement.

The positions of the Claimant and six (6) other Employees on Gang 0592, IO Tower, Indianapolis, Indiana, were abolished at the close of business on Monday, January 17, 1983. At the time of the abolishment of his position the Claimant had seniority over Employees working at Avon Yard but he failed to exercise his seniority to displace one of these Employees during the ten (10) day period following abolishment allowed by Rule 4, 2. (b) and consequently, by Carrier letter dated January 31, 1983, the Claimant was informed that his service had been closed out in accordance with said Rule.

The record indicates that the Track Supervisor at Avon Yard was a proper official for the Claimant to have presented his request for names of junior Employees that he could displace. However, it appears from the record that within the ten (10) day period the Claimant spoke with his General Foreman who advised him that no jobs were available and that there were no junior Employees whom he could displace. The record reflects that the Claimant received this same information from the Timekeeper when he picked up his paycheck on January 31, 1983. The statements of the General Foreman and Timekeeper were not correct.

After due study of the foregoing and of the whole record, inclusive of the parties' arguments in support of their respective

positions in the case, the Board concludes that the failure of the Claimant to exercise his seniority to displace a junior Employee within the time period allowed by Rule 4, 2. (b) provided a proper basis for the Carrier to institute action regarding forfeiture of the Claimant's seniority under the self-executing provisions of the Rule. However, even though the Track Supervisor at Avon Yard was a proper official for the Claimant to have presented his request for names of junior Employees, the record reflects that the Claimant was erroneously informed by other Carrier officials that there were no junior Employees subject to his displacement rights. In these circumstances, while there was a valid basis for the Carrier to take action under the Rule, the Board deems it unsound to permit the seniority forfeiture to remain in effect permanently.

Accordingly, in view of the foregoing and for the reasons indicated, the Claimant shall be returned to the seniority roster in line with his original hire date, and shall be returned to service as warranted by his seniority. The Claimant did not request compensation for time lost and therefore compensation will not be allowed.

AWARD:

The Carrier shall return the Claimant to his original place on the seniority roster, and he shall be returned to service in line with his seniority with all other rights unimpaired. The Claimant's original claim made no request for time lost and none

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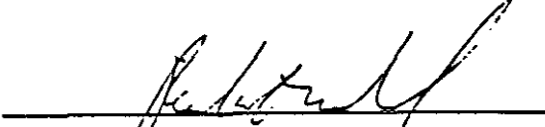
is allowed.

The Carrier shall comply with this Award within thirty (30) days from the date of June 5, 1985.

BY ORDER OF PUBLIC LAW BOARD NO. 3781.



Fred Blackwell, Neutral Member



R. O'Neill, Carrier Member



W. E. LaRue, Labor Member

Executed on Feb 12, 1986.