

PROCEEDINGS BEFORE PUBLIC LAW BOARD NO. 3781

AWARD NO. 12

Case No. 15

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-807) that:

(a) The Carrier violated the Scheduled Agreement, effective February 1, 1982, as amended, particularly Rule 3, Section 3, when it failed to assign Claimant D. Moffett to positions advertised as Advertisement 102 and 103 dated November 17, 1983.

(b) Claimant Moffett's record will show assignment to a position effective December 5, 1983.

(c) Claimant Moffett will be compensated for all time lost as a result of the Carrier's failure to award a position to the Claimant as of December 5, 1983.

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 involves a claim by a furloughed Machine Operator who asserts that his rights respecting job advertisements were mishandled by the Carrier to an extent which warrants a compensa-

tory remedy.

The Carrier opposes the claim on a procedural ground and also on the merits.

The Carrier's procedural objection is that the Claimant's July 12, 1984 claim letter was an unaddressed "Dear Sir" letter which did not conform with the Rule 26 requirement that a claim must be presented in writing to the Division Engineer, and that such nonconformity is a violation of Rule 26 that is fatal to the claim. In this regard the Board notes that the record reflects that the July 12 claim letter was received in the office of the Division Engineer on January 18, 1984 and denied by him by letter dated February 16, 1984. From these circumstances the Board finds that no impairment or hampering of the processing of the claim resulted from the fact that the claim letter was not specifically addressed to the Division Engineer and in consequence, the form of the address has no significance and cannot be said to render the claim fatally flawed. The Carrier's procedural objection is rejected.

As regards the merits of the claim, the record satisfactorily establishes the Claimant's qualifications to perform any one of the positions which under date of November 17, 1983, were advertised in his working zone, Zone 3, as positions (c) Mach. Opr. C12-Tie Shear, (d) Mach. Opr. C12-Tamper PTT, (e) Mach. Opr. C13-Hydra Spiker, and (f) Mach. Opr. C12-Track Sweeper. Award No. 44, dated December 2, 1983, awarded certain advertised

positions effective December 5, 1983, and listed positions, (c) through (f), as having "no qualified bids." Thereafter, positions (c) through (f) were abolished effective January 10, 1984.

The Board finds from the foregoing and on the whole record that since the bulletined positions were in the Claimant's work zone, and since he was on furlough at the time of the bulletin, the Claimant had automatic bid rights respecting each of the positions, (c) through (f), and that the Carrier should have awarded one of the positions to him. Accordingly, a sustaining award is in order and the claim will be sustained for the period December 5, 1983 through January 9, 1984.

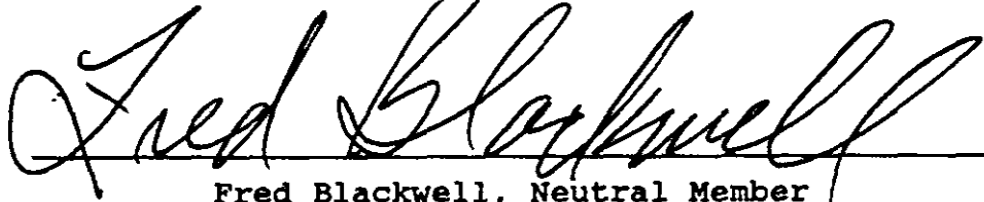
In view of the foregoing and for the reasons indicated, the claim will be sustained.

AWARD:

Claim sustained for the period stated in the Opinion.

The Carrier shall comply with this Award within thirty (30) days from the date hereof.

BY ORDER OF PUBLIC LAW BOARD NO. 3781.


Fred Blackwell, Neutral Member


R. O'Neill, Carrier Member


W. E. LaRue, Labor Member

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Executed on May 28, 1986.

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