

PROCEEDINGS BEFORE PUBLIC LAW BOARD NO. 3781

AWARD NO. 15

Case No. 12

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-648) that:

(a) The Carrier violated the effective Agreement, particularly Rule 17, on September 18 and 19, 1983, when junior employee S. J. Vinglass was given preference for overtime instead of the senior employee, Claimant P. C. Shedlock.

(b) Claimant Shedlock be compensated at the applicable operators rate for all time made by junior employee S. J. Vinglass, totaling 16 hours at time and one-half rate and 8 1/2 hours double time.

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 that the Carrier should compensate Claimant P. C. Shedlock eight and one-half hours account of the Carrier's violation of Rule 17 by assigning work of oper-

ating a Plasser Ballast Regulator at a derailment site to a junior Employee on September 18 and 19, 1983.

The initial claim letter of November 4, 1983 identified the junior Employee involved in the claim as "S. E." Vinglass; however, this was error, as "S. E." Vinglass performed work as a Foreman at the derailment on the claim dates. In an Organization appeal letter dated April 13, 1984, the Organization identified the junior Employee as "S. J." Vinglass and asked the Carrier to docket the claim for discussion. The Carrier's subsequent letter dated May 14, 1984, refers to a May 2, 1984 discussion of the claim and restates the position stated in the Carrier's prior correspondence that "S. E." Vinglass performed Foreman service on the claim dates.

After due study of the foregoing and of the whole record, the Board finds that the confusion about the name of the junior craft Employee does not render the claim procedurally defective as the Carrier contends. It is noted in this regard that the subject claim was not "against S. E. Vinglass", the Foreman, or against "S. J. Vinglass", the craft Employee, as phrased in the Carrier's submission. Rather the claim was against the Carrier on the basis of allegations that work had been improperly performed under Rule 17 by an Employee junior to the Claimant. The confusion which arose because the last name of the junior craft Employee was the same as that of the Foreman who worked at the derailment, does not alter the fact that the claim is against the Carrier, not against

an individual Employee. The Claimant was clearly identified as P. C. Shedlock, and there was never any dispute or confusion about this fact. Accordingly, the authorities cited by the Carrier dealing with inadequate identification of Claimants are thus factually dissimilar from the problem presented here.

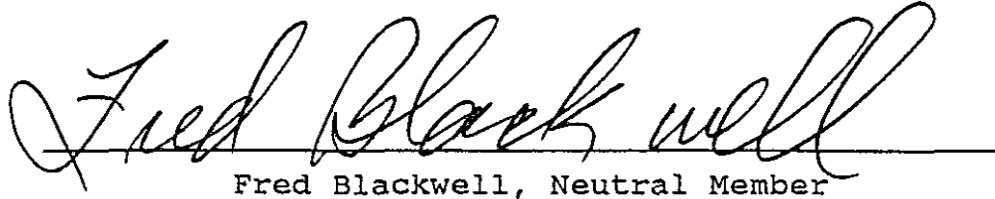
Further, since the craft Employee involved in the claim, S. J. Vinglass, was identified in the Organization's April 13, 1984 letter, which was prior to the parties' May 2 discussion of the claim, the Carrier had opportunity to submit a fact response and denial to the claim that junior Employee "S. J. Vinglass" performed work improperly, but did not. In addition from the outset of the processing of the claim, the type and quantity of work, dates of work, the location of the derailment where the work was performed, and the rule relied upon, were fully delineated by the Organization's claim letter. The facts pertinent to the claim, in this state of the record, are thus taken as established sufficiently to support the claim and it will be sustained as per the Organization's last appeal letter dated April 13, 1984.

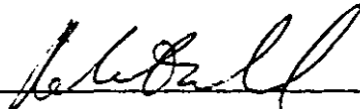
AWARD:

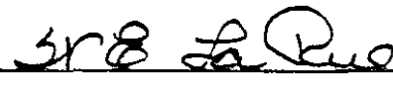
Claim sustained for eight and one-half hours as per the mentioned appeal letter of the Organization.

BY ORDER OF PUBLIC LAW BOARD NO. 3781.

P.L. Board No. 3781 - Award No. 15, Case No. 12

  
Fred Blackwell, Neutral Member

  
R. O'Neill, Carrier Member

  
W. E. LaRue, Labor Member

Executed on 5-28, 1986.

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