

PROCEEDINGS BEFORE PUBLIC LAW BOARD NO. 3781

AWARD NO. 157

Case No. 157

Referee Fred Blackwell

Carrier Member: J. C. Amidon

Labor Member: D. D. Bartholomay

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

vs.

CONSOLIDATED RAIL CORPORATION

STATEMENT OF CLAIM:

Claim of the Brotherhood (MW-2717) that:

1. The Agreement was violated when the Carrier assigned junior Foreman J. A. Morris, instead of Mr. E. O. Spring, to the Outer Yard, Toledo, Ohio track foreman position advertised via Bulletin T-85 beginning July 6, 1992.
2. As a consequence of the violation referred to in Part (1) above, Claimant E. O. Spring shall be compensated for all wage loss suffered, including benefits and other credits, beginning July 6, 1992 and continuing until such time as he was permitted to return to duty from furlough.

FINDINGS:

Upon the whole record and all the evidence, after hearing in the Carrier's Office, Philadelphia, Pennsylvania, 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.

DECISION:

Claim sustained for Foreman's position compensation for days that Employee J. A. Morris performed service on position claimed by Claimant between July 9 and August 16, 1992.

OPINION

The Organization submits that Claimant Spring should have been recalled from furlough to the Outer Yard, Toledo, Ohio, Track Foreman position, advertised in Bulletin T-85, that was assigned to junior Foreman J. A. Morris. Compensation for the alleged violation of Claimant Spring's seniority rights is requested.

The qualifications in Bulletin T-85, dated June 18, 1992, included the requirement that the successful applicant have a Class C commercial driver's license (CDL) and be certified by the Federal Highway Administrative (FHWA).

The Carrier's initial denial of the claim was in a September 23, 1992 letter of the Division Engineer, Dearborn, Michigan, which stated that (CE 3b):

"Be advised that the position Mr. Morris was assigned required an FHWA...certification, which Mr. Spring did not possess."

The record confirms that, at the time of the denial of the claim, the Claimant did not have a FHWA certification and a CDL, which latter the Claimant did not receive until April 13, 1995.

The Organization submits that the lack of a CDL and FHWA certification, on the part of the Claimant, was not a proper basis for bypassing the Claimant for the Foreman position in question in favor of a junior Employee Foreman. In this regard the Organization's appeal letter, dated December 23, 1992, states in pertinent part (CE 5a):

"...I disagree with Mr. Elston's reason denying Mr. Spring's claim contending he wasn't 'fully qualified' in that he didn't possess FHWA qualifications. First of all the position was a Track Foreman job, not Vehicle Operator. Secondly the gang was a production support gang

in which many employees possessed the License if someone was needed to drive a vehicle requiring the license. Awarding the Foreman position to Morris was contrary to the Carrier's present policy in that only gangs with 5 or less will have to have a back up License (see attached Conrail Form)."

The "Conrail Form" referred to in this passage, in the window that lists the positions requiring CDL and FHWA certification, states (CE 5a, p. 4):

"FOREMAN (5 MEN OR LESS) SAME AS GANG DRIVER, AS BACKUP"

In reviewing the foregoing and the record as a whole, the Board finds that the record contains no challenge by the Carrier, by rebuttal evidence or otherwise, to the Union assertion that the Carrier's policy concerning CDLs and FHWA certification precluded its application to the disputed Foreman position because the position was Foreman of a gang that was comprised of more than five (5) members and that was working with a large Production Gang.

Therefore, the Claimant's lack of a CDL and FHWA certification should not have been treated as factors that disqualified Claimant Spring for the disputed Foreman position. A sustaining compensatory award is therefore in order.

In view of the foregoing, and based on the record as a whole, the claim will be sustained as hereinafter provided.



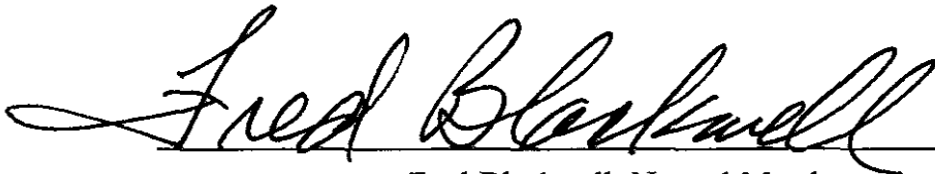
Fred Blackwell
Chairman / Neutral Member
Public Law Board No. 3781

May 30, 1998

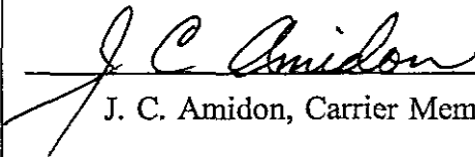
AWARD

The claim is supported and shown to be meritorious by the preponderating evidence of record. Accordingly the claim is hereby sustained and the Carrier shall compensate the Claimant in the amount that Employee J. A. Morris earned for performing service on the Foreman position in question in the period of July 9 through August 16, 1992.

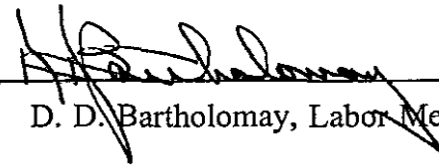
BY ORDER OF PUBLIC LAW BOARD NO. 3781.



Fred Blackwell, Neutral Member



J. C. Amidon, Carrier Member



D. D. Bartholomay, Labor Member

Executed on June 19TH, 1998

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