

PROCEEDINGS BEFORE PUBLIC LAW BOARD NO. 3781

AWARD NO. 18

Case No. 52

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-1673) that:

(a) The Carrier has violated Rules 3 and 4 of the current Scheduled Agreement, and other pertaining rules as amended on April 29, 1985, when it failed to recall Trackman J. L. Parker to a temporary vacancy on Gang SC-810, but instead recalled a junior trackman, R. L. Carpenter, to the position.

(b) The Claimant, being the senior qualified trackman and being available, shall now be compensated at the appropriate rate of the trackman position for ten (10) hours each day on April 29 and 30, May 1, 2, 6, 7, 8, 9, 13, and 14, 1985, and thereafter, until the Claimant is placed on the position for which his seniority allows.

FINDINGS:

Upon the whole record and all the evidence, after March 19, 1987 hearing at the National Mediation Board, Washington, D. C., 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

The Claimant seeks compensation for ten (10) claim dates in April and May 1985, on the basis of allegations that the Car-

rier violated the Agreement by recalling a junior Employee to a temporary track vacancy which the Claimant should have been recalled to fill.

The Organization's position is that both the Claimant and the junior Employee last worked on Zone 9 in the Columbus Seniority District, and that the Claimant, being the senior Employee, should have been called to fill the April 29, 1985 temporary vacancy in Gang SC-810 in that seniority district.

The position of the Carrier is that since the Claimant was not at his home when the Carrier phoned him for the temporary vacancy on April 26, 1985, it was proper for the Carrier to call a junior Employee by phone on the same date, and that on this basis the claim should be denied.

The record reflects that the Carrier phoned the Claimant's home to call him for the vacancy at 10:26 A.M. on April 26, 1985, and receiving no answer at the Claimant's residence, the Carrier then called a junior Employee at 10:38 A.M. on the same date. The junior Employee accepted the temporary vacancy and reported on April 29, 1985.

After due study of the foregoing and of the whole record inclusive of the arguments submitted by the parties in support of their respective positions in the case, the Board concludes that the claim is meritorious and accordingly the claim will be sustained on the basis hereinafter provided.

Rule 3, Section 4 of the Agreement, which governs the

filling of temporary vacancies, does not prescribe any specific mode of communication in respect to calling a furloughed Employee to fill a temporary vacancy. Accordingly, the Carrier has discretion to use the phone, the mail, a messenger service, or other mode of communication so long as the Carrier's actions in the matter constitutes a reasonable, good faith effort to comply with applicable Agreement provisions as determined by the overall circumstances.

In the case at hand the Carrier's action of phoning the Claimant only once on April 26, followed twelve (12) minutes later by phoning the junior Employee on the same date, without making any further effort to contact the Claimant even though the junior Employee did not report for duty for more than two (2) days after the initial calls were made, are found by the Board to fall substantially short of constituting a reasonable effort to contact the Claimant in order to apprise him of his preference to the track vacancy in question. Accordingly the claim will be sustained through May 13, 1985; this is the effective date of the award of the posted position and consequently, the temporary vacancy expired on this date.

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

AWARD:

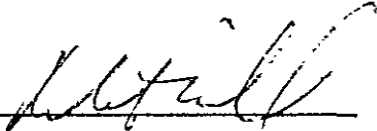
Claim sustained as per the Opinion.

P.L. Board No. 3781 - Award No. 18, Case No. 52

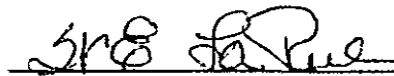
BY ORDER OF PUBLIC LAW BOARD NO. 3781.



Fred Blackwell, Neutral Member



R. O'Neill, Carrier Member



W. E. LaRue, Labor Member

Executed on September 11, 1987.

OP:08-28\52.18