

PROCEEDINGS BEFORE PUBLIC LAW BOARD NO. 3781

AWARD NO. 29

Case No. 86

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:

Docket No. CR-2376 - Claimant Hilands

[As stated in submissions and not repeated herein.]

FINDINGS:

Upon the whole record and all the evidence, after January 18, 1988 hearing in 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 case arises on the basis of allegations that the Carrier improperly denied the Claimant's November 25, 1985 request to bump the incumbent of an Undercutter Operator position on the undercutter machine while it was stationed at the Brier Hill Maintenance of Way Repair Shop for normal winter repairs. The Brier Hill Repair Shop is located on the Youngstown Division in Inter-Regional Seniority District 2.

The basis of the claim, is that the Claimant, Mr. Highlands, holds seniority as a Machine Operator on the Inter-Regional Seniority District 2, whereas the target Employee, Mr. Cremonti, holds seniority on Inter-Regional District 4, but does not possess seniority on the Inter-Regional District 2.

The Organization submits that the Carrier's administration of the Claimant's attempted bump, and denial of the bump, was violative of Rule 4 of the Schedule Agreement, because the Rule 4 provisions provide that seniority under the Agreement exists by virtue of an Employee having standing on a seniority roster for a specific district, i.e., Seniority District 1, 2, 3, or 4, as per Agreement provision in Rule 4, Section 5 (b); and that the rules cited in this case do not establish a "system" seniority district encompassing two or more of the established seniority districts.

The Carrier submits that its action was contractually permissible because the incumbent target of the Claimant's attempted bump, Mr. Cremonti, was the prevailing bidder on the Undercutter Operator position when the involved undercutter gang was advertised as Inter-Regional Seniority District 4, and that in line with prior practice, Mr. Cremonti remained with the undercutter when it was sent to the Brier Hill Repair Shop for winter repairs.

After due study of the foregoing and of the record as a whole, inclusive of the submissions presented by the parties in support of their respective positions in the case, the Board concludes and finds that the Employee's position is correct and that

a sustaining award is in order.

In regard to the parties conflicting positions on the question of whether the Carrier acted in accord with a binding past practice, the information of record is mixed and highly generalized and hence, the Board finds the information on past practice unpersuasive. Even if the past practice information were more impressive, we have here the type of provision in Rule 4 which is written with such specificity that the Rule is enforceable at the behest of either party, notwithstanding prior instances of deviation from the specific provisions of the Rule.

Rule 4, Section 1 (b) and Section 5 (b) and (c), clearly provide that seniority standing exists on the basis of rosters of specified seniority districts and that such seniority districts may only be changed by agreement between the Senior Director-Labor Relations and the involved General Chairman. Moreover, it is axiomatic that equipment has no significance in regard to seniority and that, although Management has sole authority to determine where equipment shall be located, seniority does not follow equipment and hence, this authority does not make seniority interchangeable between and among districts.

In sum, the involved undercutter was headquartered in the Claimant's seniority district on November 25, 1985. The position of the operator of the undercutter was therefore within reach of the Claimant's seniority, when he requested to exercise his seniority to that position. The Carrier denied the Claimant's request and retained an Employee in the Undercutter Operator posi-

tion who had no rights in that district, which resulted in the Claimant being placed in furlough status.

In view of the foregoing, and based on the record as a whole, the Carrier's handling of the Claimant is found wrongful and violative of the Agreement. Accordingly, the claim will be sustained to the extent that the Carrier shall compensate the Claimant for loss of wages while the undercutter position was located in the Inter-Regional Seniority District 2.

AWARD:

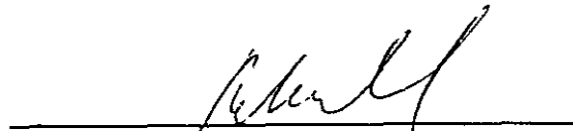
Claim sustained and the Carrier is directed to compensate the Claimant for loss of earnings during the period the Undercutter Operator position was situated in the Claimant's Inter-Regional District 2.

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

Executed on June 5, 1989

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