

PROCEEDINGS BEFORE PUBLIC LAW BOARD NO. 3781

AWARD NO. 31

Case No. 97

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-2739 - Claimant Nichols

[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

This claim arises on the basis of allegations by Claimant Nichols that the Carrier violated the Scheduled Agreement, Rules 3, 4, 5, and 6, by the manner in which it administered the Claimant's rights to a Class 2 Machine Operator position at Utica, New York. The remedy requested is that the target of the Claimant's protest, Machine Operator J. J. Davis, be subject to seniority forfeiture under Rule 4 of the Agreement, and that the Claimant be

compensated for any lost wages which resulted from the alleged violation.

Prior to April 1983 both Claimant Nichols and Mr. Davis held Class 2 Machine Operator positions at Utica, New York, with the Claimant being assigned as a Front End Loader Operator and Mr. Davis assigned as a Backhoe Operator.

In April 1983 Mr. Davis' position as Backhoe Operator was abolished, and the Claimant's position was assigned the duty of operating the Backhoe in addition to the Front End Loader duty.

In February 1986 the Claimant marked off his position due to disability resulting from an off-duty injury, and by Bulletin dated February 10, 1986, the Claimant's position was advertised for bid. Before the job was awarded the advertisement was cancelled on the basis of a determination that the Front End Loader was to be used at a different location on the Division. The position was re-advertised as a Class 2 Machine Operator (Backhoe) position on March 3, 1986 and awarded to Mr. Davis on March 12, 1986.

By letter dated March 21, 1986, the Claimant filed a Rule 26 grievance alleging that the Claimant's Front End Loader position had been re-advertised as a Backhoe Operator position to accommodate Mr. Davis who is not qualified as a Front End Loader Operator, and requesting as remedy that Mr. Davis' seniority be terminated due to his alleged failure to displace the Claimant "...upon receiving his abolishment notice last fall, the fall prior to that, the fall prior to that".

The Carrier denied the claim by August 14, 1986 letter which stated that the Claimant's Front End Loader position should have been abolished in February 1986, rather than being posted by advertisement which was cancelled because the Front End Loader was to be used at another location. Accordingly, the Carrier posted an August 26, 1986 Bulletin stating that the Front End Loader Operator position had been advertised in error, that the position should have been abolished; and that the position "is hereby abolished effective February 10, 1986".

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 positions in the case, the Board concludes and finds that the record does not support the claim and that accordingly, the claim must fail for lack of the requisite record support. Further, the record indicates that the Claimant's position of Front End Loader Operator was vacant when it was erroneously posted for bid in February 1986 and in addition, that the advertisement was cancelled before the position was awarded. Hence, no Employee appears to have been prejudiced by the erroneous job advertisement and the subsequent cancellation of the advertisement.

The record also indicates that the Carrier's May 3, 1986 advertisement of a Backhoe Operator position was properly based on the Carrier's service requirements at that time, and that the award of the position to Mr. Davis was properly based on his seniority and qualifications. In these circumstances there is no basis for finding the Carrier's actions to be violative of the

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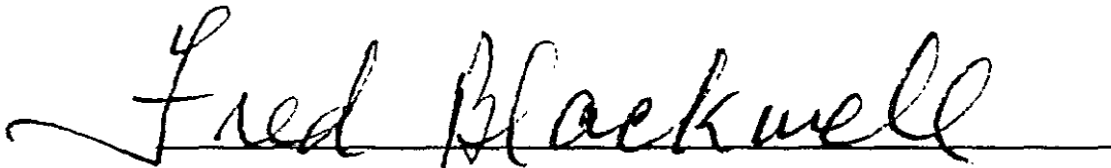
applicable Agreement.

In view of the foregoing, and based on the record as a whole, the Board concludes that the record does not show the claim to be meritorious and on that basis, the claim will be denied.

AWARD:

Claim denied.

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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