

PROCEEDINGS BEFORE PUBLIC LAW BOARD NO. 3781

AWARD NO. 32

Case No. 102

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-2482) that:

- (a) The Carrier's decision to remove Repairman M. T. Ruth from the System Repair Shop Roster at Canton, Ohio, was without just and sufficient cause and in violation of the Scheduled Maintenance of Way Agreement.
- (b) Claimant Ruth shall have his seniority restored as Repairman, including any other seniority he holds, to the System MW Repair Shop Roster at Canton, Ohio.

FINDINGS:

Upon the whole record and all the evidence, after March 20, 1989 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 is an appeal from the Carrier's action of removing the Claimant from the BMWSE Seniority Roster of the Canton Shop Seniority District under Rule 4, Section 2 (b) of the parties' February 1, 1982 Schedule Agreement as amended June 14, 1982.

The record reflects that after working the 1985 production season as a Trackman-Operator in the Southern Tier Seniority District, the Claimant's position was abolished at the end of the production season. The abolishment occurred on October 16, 1985. As there were no junior Employees in the Southern Tier Seniority District at the time of the abolishment, the Claimant was furloughed from the Southern Tier Seniority District on October 17, 1985. The Claimant at this time did not exercise seniority over junior Repairmen in the Canton Shop Seniority District.

On December 11, 1985, the Claimant was awarded a Repairman position in the Canton Shop Seniority District, whereupon, on December 12, 1985, the Pennsylvania Federation of the BMW submitted a protest of the award on the basis that the Claimant should have forfeited his seniority at Canton Shop when he failed to exercise his seniority within ten (10) days after his Trackman-Operator position was abolished on October 16, 1985.

The Carrier sustained the protest of the Pennsylvania Federation and by letter dated April 18, 1986 advised the Claimant that his seniority at Canton Shop was forfeited under Rule 4, Section 2 (b) of the Schedule Agreement.

Appeal to restore the Claimant's Canton Shop seniority was made by the Consolidated Rail System Federation of the BMW on the basis that extenuating circumstances existed which should have permitted the Claimant to retain his Canton Shop seniority.

The matter was considered on the property, but a mutually satisfactory settlement was not reached, and this dispute result-

ed.

After review of the foregoing and of the record as a whole, the Board concludes that extenuating circumstances existed which permitted the Claimant to retain his Canton Shop seniority and accordingly, his claim will be sustained as hereinafter provided.

More specifically the Board concludes and finds that the Maintenance of Way Chief Clerk at Hornell, New York, advised the Claimant that he was not obligated to exercise his seniority at the Canton, Ohio, Shop as a Repairman when his Trackman-Operator position in the Southern Tier Seniority District was abolished on October 16, 1985.

The Chief Clerk's April 18, 1986 statement which supports this finding reads as follows:

"During the month of October, 1985, Mr. M. T. Ruth was working as a trackman on an Anchor Gang on the Southern Tier District. When the gang was abolished, Mr. Ruth personally approached me seeking advice on his disposition. I advised him that there were no positions available for him to displace. Mr. Ruth then asked me if he was obligated to exercise his seniority back to Canton Shop as a Repairman. I advised him that he was not required to do so, and by not doing so, he would not forfeit his seniority.

At that time, when I advised Mr. Ruth, I was under the impression that the advice I gave Mr. Ruth was in accordance with the B.M.W.E. Agreement."

Although the advice of the Chief Clerk at Hornell appears to have been based on a mistaken construction of the application

of the Schedule Agreement and although he does not have authority to interpret the Agreement, the fact that he gave the indicated advice to the Claimant clearly constitutes an extenuating circumstance in the Claimant's behalf under Rule 4, Section 2 (b) of the Schedule Agreement, which renders the seniority forfeiture action inappropriate.

In view of the foregoing, and based on the record as a whole, the Carrier will be directed to reinstate the Claimant to his former position on the System MW Repair Shop Roster at Canton, Ohio.

AWARD:

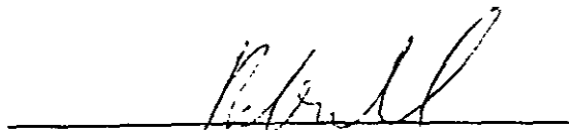
The record reflects that "extenuating circumstances" within the meaning of Rule 4, 2(b), of the BMW Agreement prevented the forfeiture of the Claimant's seniority under said Rule and accordingly, the Claimant shall be reinstated within thirty (30) days from the date of March 23, 1989 to the System MW Repair Shop Roster at Canton, Ohio.

The parties have been notified of this Award by Memorandum Letter dated March 23, 1989.

BY ORDER OF PUBLIC LAW BOARD NO. 3781.



Fred Blackwell, Neutral Member



R. O'Neill, Carrier Member



W. E. LaRue, Labor Member

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Executed on June 5, 1989

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