

PROCEEDINGS BEFORE PUBLIC LAW BOARD NO. 3781

AWARD NO. 36

Case No. 57

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-¹⁵⁰²~~1674~~) that:

- (a) The Carrier has violated the Scheduled Agreement when awarding the B&B Mechanic position on the Inter-Regional Gang 402 to junior employee W. Higgins, by notice dated December 17, 1984, instead of Claimant R. F. Wheeler, who was the senior employee.
- (b) Claimant R. F. Wheeler shall be granted a seniority date of January 2, 1985, as a B&B Mechanic on the Inter-Regional roster and properly compensated for all lost time.

FINDINGS:

Upon the whole record and all the evidence, after September 23, 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 case arises from Claimant R. F. Wheeler's allegations that the Carrier improperly disallowed his bid on a B&B Mechanic position advertised for Gang 402 with headquarters at

Stratsburg, New York on December 4, 1984, because he did not possess a Class 2 drivers license and instead, awarded the position to a Junior B & B Mechanic who possessed a Class 2 license. At the time of the claim, Claimant Wheeler was in furlough status.

The Carrier asserts that the determination of the qualifications for a position is a Carrier prerogative, and that the disputed drivers license requirement was an appropriate requirement for the B & B Mechanic position in question.

The record indicates that the Class 2 drivers license was not required prior to Gang 402's use of Boom Trucks which began in July 1984. The Carrier's reasoning for Management's decision to require the drivers license is reflected in a Carrier letter dated May 24, 1985, reading in pertinent part as follows:

"The logic behind requiring all gang members to have the Class II license is because they are comparatively small gangs, very mobile and, with a pick up truck and a boom truck assigned to each gang, the required flexibility to have any gang member drive the truck is necessary."

* * * * *

After due study of the whole record, inclusive of the submissions presented by the parties in support of their positions in the case, the Board concludes and finds that while there was a reasonable basis for the Carrier to require a Class 2 drivers license for the B & B Mechanic position in question, the record reflects that the license had not been required prior to the December 1984 bulletin, and that there was no need to implement the re-

quirement on an urgent basis.

In these circumstances the Board concludes that the Carrier had opportunity to give reasonable advance notice that Gang members would be required to possess a Class 2 drivers license, and opportunity as well to phase in the requirement after the newly advertised positions were awarded. Accordingly, the Carrier's failure to take these measures to assure opportunity for all affected Employees to apply for the license, is found unreasonable and arbitrary and the claim will be sustained on this basis. For a similar ruling see Award No. 16, Special Board of Adjustment No. 956, Brotherhood of Maintenance of Way and New Jersey Transit Rail Operations (January 30, 1986).

In regard to remedy the Board notes that the original grievance filing of January 8, 1985 requested award of the position and a seniority date of January 2, 1985 on the Inter-Regional Roster. This request will be sustained. The subsequent request of July 23, 1985 for wage loss was made in the appeal to the Senior-Director and not to the Chief Regional Engineer within sixty (60) days from occurrence on which claim is based, as required by Rule 23. Consequently, the claim for wage loss does not comply with the governing procedure and it cannot be sustained.

For the reasons indicated in the foregoing, and based on the record as a whole, the claim will be sustained to the extent of the remedy requested in the grievance filing of January 8, 1985.

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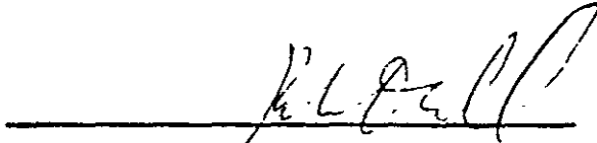
AWARD:

Claim sustained as per the Opinion. The claim for wage loss is disallowed as not in compliance with the governing procedure.

BY ORDER OF PUBLIC LAW BOARD NO. 3781.



Fred Blackwell, Neutral Member



R. O'Neill, Carrier Member



W. E. LaRue, Labor Member

Executed on July 10, 1989

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