

PROCEEDINGS BEFORE PUBLIC LAW BOARD NO. 3781

AWARD NO. 38

Case No. 81

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-1964) that:

- (a) The Carrier has violated Rules 3 and 4 of the Schedule Agreement, as amended, when it failed to recall Claimant R. L. DiFolco but instead recalled T. M. Gottshall, a junior employee, to perform work as a casual truck driver on TK 143 (Tie Gang) on April 29, 1985, New Jersey Division.
- (b) Claimant R. L. DiFolco shall be compensated for all lost wages, including overtime, commencing April 29, 1985, until his return to service, as a result of this violation.

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 on the Carrier's New Jersey Division on the basis of allegations that the Carrier improperly bypassed the Claimant when it failed to recall the Claimant to work as a casual

Truck Driver on Tie Gang 143 on April 29, 1985, and instead recalled junior Employee T. M. Gottshall. By grievance filed on June 26, 1985, the Claimant's Representative alleged that the Carrier's action violated Rules 3 and 4 of the parties' Schedule Agreement and requested that the Claimant be compensated for all time lost.

The Carrier submits that the claim should be denied on the basis that on March 25 and April 5, 1985, the Carrier's Assignment Clerk failed to reach the Claimant by calling his phone number listed in the Carrier's files, and that the Carrier was not able to recall the Claimant to service by Certified Letter because he had failed to keep his address on file with the Carrier as required by Rule 4. The Carrier submits further that in August 1985, the Claimant spoke with the Assignment Clerk of the Elizabethport, New Jersey Division Engineer, provided his correct address, and verbally declined to return to work.

\* \* \* \* \*

After due study 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 shows the claim to be meritorious and accordingly, the claim will be sustained as hereinafter provided.

The record establishes that prior to and following April 29, 1985, the Claimant resided at 1528 Fourth Street, Apt. 1, FLR 1, Altoona, Pennsylvania, and that the Claimant filed with the

Carrier, effective 8-21-1985, a change of address to 2819 Fifth Avenue, Altoona, Pennsylvania 16602 (Employees' Exhibit E). Accordingly, the Board rejects as not supported by the record the Carrier's assertion that the Claimant failed to keep his current address on file with the Carrier as required by Rule 4.

Rule 4, Section 3., of the Schedule Agreement contemplates that the Carrier will give notice of recall to an Employee at his last reported address. As previously indicated, the Claimant had the same Altoona address on file with the Carrier from 1983 until he filed a change of address effective 8-21-1985 and consequently, the Carrier's failure to send him notice of recall by Certified Letter was violative of Rule 4, Section 3.

In addition, while the record reflects that the Claimant spoke to the Division Engineer's Assignment Clerk in August 1985, the record contains no supporting documentation of the Carrier's assertion that the Claimant at this time verbally declined to return to work. Accordingly, the Carrier's assertion in this regard is also rejected for lack of record support.

In view of the foregoing, and based on the record as a whole, the Claimant's request for compensation will be sustained for the period April 29 until the date of the furlough of the junior Employee (Trackman T. M. Gottshall) on October 11, 1985.


**AWARD:**

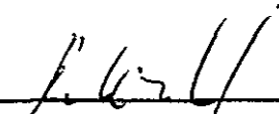
The Carrier shall within thirty (30) days from the date hereof compensate the Claimant for lost wages from April

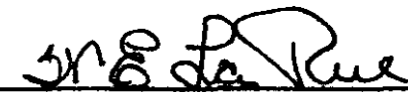
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29 through October 11, 1985.

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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