PROCEEDINGS BEFORE PUBLIC LAW BOARD NO. 3781

AWARD NO. 4

Case No. 4

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-354) that:

(a) The Carrier violated the Rules Agreement effective February 1, 1982, particularly Rule 4, Section 2, when it prohibited Claimant Russell Irwin to displace junior employees in the exercise of his contractual right on December 20, 1982.

(b) Claimant Irwin's record be corrected to reflect that displacement was allowed as of December 20, 1982.

(c) Claimant Irwin be reimbursed any loss of wages as a result of the Carrier's failure to allow him to displace said junior employees on December 20, 1982.

FINDINGS:

Upon the whole record and all the evidence, after hearing, 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 a qualification dispute arising from the Claimant's protest of the Carrier's action in December 1982, whereby the Carrier refused the Claimant's request to displace to

any one of three positions held by junior Employees due to the Carrier's determination that the Claimant was not qualified for the positions involved in his request.

Under date of February 4, 1983, the Claimant filed three (3) separate claims in connection with the Carrier's disqualification action which have been presented in Cases Nos. 2, 3, and 4. This dispute involves Case No. 4, relating to Claimant's request to displace Mr. Vincent Ferrero from the position of Boom Truck Operator on the Selkirk Sub-division. Case No.2, relating to Claimant's attempted displacement to the position of Track Foreman/Switch Inspector, and Case No. 3, relating to Claimant's attempted displacement to the position of Assistant Foreman, have been considered and disposed of in denial Awards Nos. 2 and 3.

The record reflects that in the handling on the property the Carrier stated that it determined that the Claimant was not qualified for the position of Boom Truck Operator, because the position required several qualifications which the Claimant did not possess. More specifically, the Carrier asserted during handling on the property that the position required knowledge of the Rules of the Transportation Department and knowledge of the Rules established by the Federal Railroad Administration, and that the Claimant failed to show that he was qualified on the Transportation Rules or that he possessed an F.R.A Card. The Carrier also stated that the Claimant had previously refused to drive a vehicle because he did not have a valid license, and that

he had indicated that he did not want to displace Mr. Ferrero from the Boom Truck position; but rather, wanted to bump Mr. Ferrero as a Trackman, which latter position Mr. Ferrero did not hold on the date in question.

The Organization's submission challenges the accuracy of all of the Carrier's fact assertions except the assertion that the Claimant wanted to bump Mr. Ferrero from the position of Trackman, and not from the position of Boom Truck Operator. However, the Organization's concession in this regard is based upon the contention that bumping to the Trackman position was the proper procedure in the existing circumstances, because the incumbent of the target position, Mr. Fererro, did not hold a Boom Truck Operator position, but instead, held a Trackman position and from time to time operated the Boom Truck and received the Driver's rate under the "Casual Driver" provision of the Agreement only when he performed a prescribed amount of service on the Boom Truck.

After due study of the foregoing and of the whole record, inclusive of the parties' arguments in support of their respective positions in the case, the Board concludes that although the argument in Claimant's behalf has been vigorously advanced in the most plausible manner possible by his representatives, in the final analysis, it cannot be said that the facts necessary to support the argument are established by the record. The Board observes that we have in this case a record which presents a number of conflicting fact questions, but which, in terms of

concrete factual information, is too sparse and sketchy to provide a basis for resolving the fact conflicts. In short, this is a case in which the claim would stand in a much stronger posture if the fact assertions made in support of the claim were established by the record, but, since these facts cannot be said to have been established on the instant record, the claim will be dismissed for lack of the requisite fact support.

Accordingly, on the whole record, the Board concludes that the confronting record does not establish the Carrier's action to be violative of the Agreement and accordingly, in line with the denial rulings in Awards No. 2 and No. 3, this claim will be dismissed.

AWARD:

Claim dismissed.

BY ORDER OF PUBLIC LAW BOARD NO. 3781.

Fred Blackwell

Fred Blackwell, Neutral Member

R. O'Neill

R. O'Neill, Carrier Member

W. E. LaRue

W. E. LaRue, Labor Member

Executed on Feb. 12, 1986.