

PROCEEDINGS BEFORE PUBLIC LAW BOARD NO. 3781

AWARD NO. 42

Case No. 42 (58)

Referee Fred Blackwell

Carrier Member: J. H. Burton

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-1514) that:

- (a) The Carrier violated the Scheduled Agreement, particularly Rule 3, Section 4, and Rule 4, Section 3, when it failed to properly call Trackman M. L. Seitz, Jr., on January 27, 28, and 29, 1985, but instead called a junior employee to perform work on those dates.
- (b) Claimant M. L. Seitz, Jr. shall be compensated eight hours on January 27, 28, and 29, 1985, including eight (8) hours overtime, and any benefit credits and/or other lost benefits, due to the Carrier's failure to properly call the Claimant.

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

The Claimant, a furloughed Trackman, seeks to be made whole for wages lost on January 27, 28, and 29, 1985, due to the Carrier's action of using junior furloughed Trackmen to perform

track work on these three (3) dates.¹

The record reflects that main line tracks were blocked late on January 26, 1985, by a derailment which occurred between Killbuck and Carrollton, New York; and that in connection therewith, the Carrier determined that its need for extra Trackmen warranted the use of furloughed Trackmen.

The Carrier asserts that the Claimant was called between 1 and 2 A.M. January 27, 1985, but did not answer his phone; that since the derailment had created an emergency, the Carrier continued to process the list of furloughed Trackmen to recall sufficient manpower to help deal with the derailment; and that by this process two furloughed track employees junior to the Claimant were recalled for the derailment work.

The Organization asserts that the Carrier has submitted no phone log or other proof of the Carrier's attempt to contact the Claimant on January 27, 1985; and that the Carrier has not refuted the Claimant's assertion that the junior employees commenced work at 9 A.M. on January 27, 1985, and that hence, additional attempts to contact the Claimant after 2 A.M. on that date could have been made. The Organization says further that even if the Carrier's attempts to contact the Claimant on January 27 are found reasonable, the Claimant should be compensated for wage loss of

¹ There is no dispute that two (2) furloughed Trackmen junior to the Claimant performed work on the claim dates, although there is some uncertainty about when they commenced work on January 27, 1985.

January 28 and 29, 1985 because, after releasing the two (2) junior employees from work on January 27, the Carrier assigned them to return to work for the next two days, but made no attempt to contact the Claimant on January 28 or 29, 1985.

After due study of the foregoing and of the record as a whole, the Board concludes that the Carrier's assertion that the Track Supervisor attempted to contact the Claimant between 1 and 2 A.M. on January 27, 1985, is sufficient to rebut the claim for compensation on that claim date. However, the record shows that the Claimant should have been called for the work performed by junior furloughed Trackmen on January 28 and 29, 1985 and that the Carrier made no attempt to contact him regarding this work.

Accordingly, in view of the foregoing and on the whole record, the Board finds that the Claimant is entitled to compensation for wage loss of January 28 and 29, 1985, and the claim will be sustained on this basis.

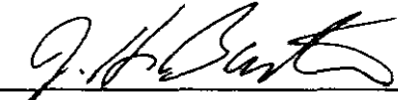
AWARD:

Claim sustained to the extent that the Carrier is directed to compensate the Claimant on a make whole basis for the claim dates of January 28 and 29, 1985.

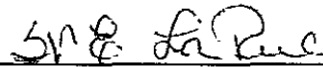
BY ORDER OF PUBLIC LAW BOARD NO. 3781.



Fred Blackwell, Neutral Member



J. H. Burton, Carrier Member



W. E. LaRue, Labor Member

Executed on April 26, 1990

CONRAIL\3781\42-58.418