

PROCEEDINGS BEFORE PUBLIC LAW BOARD NO. 3781

AWARD NO. 5

Case No. 5

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-436) that:

(a) The Carrier violated the effective Agreement, particularly Rule 3, Section 3(c), and Rule 4, Section 3, on April 27, 1983, when junior employees E. Troy, P. R. Eik, and J. Mantano were recalled from furlough instead of the senior employee, Claimant W. Rankin.

(b) The Claimant be compensated for all wage loss suffered, including any overtime, which was denied the Claimant by this improper recall.

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 case arises from the claim of Trackman W. Rankin who alleges that the Carrier recalled junior Employees Troy, Eik, and Mantano from furlough ahead of him and thereby violated his rights under the parties' Agreement. The requested remedy is for the

Carrier to compensate the Claimant for the time worked by junior Employees prior to his recall.

The parties' submissions are in disagreement in respect to several of the pertinent facts of the case. The Organization asserts that all of the employees involved in this dispute, the three named junior Employees (Troy, Eik, and Mantano) and Claimant Rankin, were assigned to Work Zone 2 when they were placed on furlough; that the three junior Employees were recalled to Zone 3 on April 27, 1983; and that the Claimant was recalled to a position in Work Zone 3 on June 21, 1983.

The Carrier initially denied the claim in a July 11, 1983 letter which stated that the junior men had been "recalled for the Camp Cars". Later, in a March 5, 1984 letter, the Carrier said that two of the Employees, Eik and Mantano, had been recalled to positions in crafts other than Trackman; and that Mr. Troy had been recalled to a Trackman position in Working Zone 1. The Carrier's submission states that Claimant Rankin and Trackman Troy were both assigned to Work Zone 2 when they were placed on furlough; and that Employee Troy was recalled from furlough on May 10, 1983 to fill a Trackman position which was advertised in Work Zone 1 at Pier 124, Philadelphia, Pennsylvania, and which became a no bid position.

Since the Board has no information of record by which to resolve all of these conflicting fact issues, the confronting dispute will be decided on the basis of the facts of record which are

not in conflict, namely, that both Claimant Rankin and Trackman Troy were assigned to Work Zone 2 at the time of their furlough; that the Claimant is senior to Employee Troy; that Employee Troy was recalled on May 10, 1983 to a no bid position in a zone other than Zone 2; and that Claimant Rankin was recalled to a position in a zone other than Zone 2 on July 21, 1983.

The Organization submits that the claim is supported by Rule 3, Section 3(c) of the Agreement, as amended by Amendment 4, dated June 14, 1981. The Carrier submits that the claim should be denied on the basis of Rule 4 of the applicable Agreement, in that the Claimant had no greater rights than Employee Troy under that Rule to be recalled to the position in Work Zone 1.

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 Claimant Rankin and Employee Troy were both assigned to Work Zone 2 at the time of their furlough; and that both were eligible bidders on the basis of their district seniority on the subject Trackman position at Pier 124 which was in a zone other than Work Zone 2. The Board further observes that although the record does not indicate the Carrier's criterion for selecting Trackman Troy for the Trackman position in Zone 1 at Pier 124, it seems clear from the record that he was not selected for the position on the basis of the automatic bidder provision in Rule 3, Section 3(c) of the Agreement. Thus, in the facts at hand, neither Trackman Troy nor

Claimant Rankin were covered by the "automatic bidder provision" of Rule 3, Section 3, as amended on June 14, 1981. In these circumstances when the Carrier decided to recall a Zone 2 Employee, the Carrier should have recalled Claimant Rankin to the position ahead of junior Employee Troy on the basis of the Rule 3, Section 1, text which provides that: "qualification being sufficient, seniority shall govern" in the assignment of Employees to positions under the Agreement. It is thus no defense to the claim that a senior furloughed Zone 1 Employee would have greater rights to recall to the Zone 1 position at Pier 124 than either the Claimant or Employee Troy. Rule 4, Section 3 as amended, cited by the Carrier, provides a right for the Carrier to demand (i.e., force) the return-to-work of a furloughed Employee to service in a vacant position in his working zone; the Rule does not apply to an Employee's opportunity for recall to a vacancy in a work zone other than his own work zone, respecting which, the Employee is free to decline, all of which is made clear by the provision in the Rule which provides for forfeiture of seniority of an Employee who does not return to service within the time period allowed by the Rule.

Accordingly, and in line with the foregoing, the claim will be sustained and the Carrier shall compensate the Claimant for time lost from the date on which Trackman Troy was returned to service on the Trackman's position in Work Zone 1 until the Claimant's return to work on June 21, 1983.

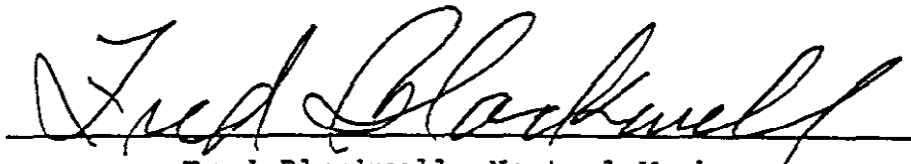
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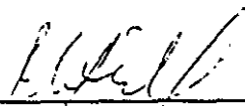
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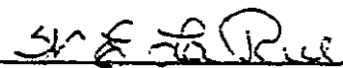
Claim sustained as per the Opinion, with the Claimant to be compensated on the basis of the work days between the time of Trackman Troy's return to service on May 13, 1983 and the Claimant's return to service on June 21, 1983.

The Carrier shall comply with this Award within thirty (30) days from the date hereof.

BY ORDER OF PUBLIC LAW BOARD NO. 3781.


Fred Blackwell, Neutral Member


R. O'Neill, Carrier Member


W. E. LaRue, Labor Member

Executed on Feb 13, 1986.