

PROCEEDINGS BEFORE PUBLIC LAW BOARD NO. 3781

AWARD NO. 52

Case No. 52 (120)

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-3251) that:

(a) The Carrier violated the effective agreement by failing to correctly inform Trackmen A. Novak and L. Tillman of their displacement rights when their positions were abolished on June 8, 1987.

(b) The Carrier further violated the agreement when it failed to allow Claimants to return to service after it was aware of extenuating circumstances involved preventing the Claimants from making timely displacement.

(c) The Claimants be returned to service with seniority and all other rights unimpaired and compensated for all time lost as a result of the Carrier's decision to remove the Claimants from all rosters."

FINDINGS:

Upon the whole record and all the evidence, after November 8, 1990 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 the Claimants' appeal and protest

of the Carrier's action of July 13, 1987, whereby the Carrier terminated their employment status with the Carrier due to their failure to exercise their seniority in timely manner under Rule 4, Section 2. (b) of the applicable Agreement.

The positions of the Claimants on the Turnout Gang at Selkirk, New York, were abolished at the close of business on June 8, 1987. At the time of the abolishment of their positions the Claimants had seniority over employees working at Selkirk Yard but they failed to exercise their seniority to displace junior employees during the ten (10) day period following abolishment allowed by Rule 4, 2. (b) and consequently, by Carrier letter dated July 13, 1987, the Claimants were informed that their seniority had been forfeited in accordance with said Rule.

It appears from the record that within the ten (10) day period the Claimants spoke with the Track Supervisor at Selkirk who advised them that jobs were available on Production Gang at Selkirk with junior employees whom they could displace. The record reflects that the Claimants received information from the Supervisor that the Production Gang would be leaving Selkirk in four (4) or five (5) days, thereby making it unnecessary for Claimants to exercise seniority at that time. However, the Production Gang did not leave Selkirk as scheduled and the Supervisor failed to advise the Claimants of that change.

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 the failure of the Claimants to exercise their seniority to displace a junior employee within the time period allowed by Rule 4, 2. (b) provided a proper basis for the Carrier to institute action regarding forfeiture of the Claimants' seniority under the self-executing provisions of the Rule. However, the record reflects that the Claimants were erroneously informed by the Track Supervisor that the Production Gang was moving from Selkirk in four (4) or five (5) days and there were no junior employees subject to displacement. In these circumstances, while otherwise there was a valid basis for the Carrier to take action under the Rule, the Board deems it unsound to permit the seniority forfeiture to remain in effect permanently.

Accordingly, in view of the foregoing and for the reasons indicated, the Claimants shall be returned to the seniority roster in line with their original hire dates, and shall be returned to service as warranted by their seniority. The Claimants did request compensation for time lost and therefore, however, because of the extenuating circumstances no money will be allowed.

AWARD:

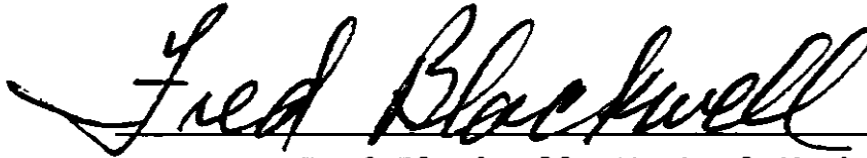
The Carrier shall return the Claimants to their original place on the seniority roster, and they shall be returned to service in line with their seniority with all other rights unimpaired, but without pay.

The Carrier shall comply with this Award within

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thirty (30) days from the date hereof.

BY ORDER OF PUBLIC LAW BOARD NO. 3781.



Fred Blackwell, Neutral Member.


J. H. Burton, Carrier Member
W. E. LaRue, Labor Member

Executed on Dec 13, 1990

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