PROCEEDINGS BEFORE PUBLIC LAW BOARD NO. 3781

AWARD NO. 66

Case No. 66

Referee Fred Blackwell

Carrier Member: J. H. Burton Labor Member: Henry Wise

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

vs.

CONSOLIDATED RAIL CORPORATION

STATEMENT OF CLAIM:

[As stated in the submissions and not repeated herein.]

Claimant Faulhaber - Time Claim

FINDINGS:

Upon the whole record and all the evidence, after February 25, 1994 hearing in the Carrier's Office, Philadelphia, Pennsylvania, 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.

DECISION:

Claim Denied.

OPINION

The herein claim was filed on August 9, 1989, in behalf of Claimant T. R. Faulhaber who last worked for Conrail on October 27, 1987. The claim requests that the

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Claimant receive compensation for lost wages and benefits beginning August 8, 1989, the date on which he was refused a displacement at Airline Yard in Toledo, Ohio, on the basis that he had forfeited his seniority a year earlier.

The pertinent facts are that the Claimant was furloughed from the Carrier's service on October 27, 1987. Thereafter, the Claimant was recalled to service by the Division Engineer, Dearborn, Michigan, by letter dated June 23, 1988, which stated in the last paragraph that:

> *"Failure to report for work to the Office of the Division Engineer within ten (10) days will result in your forfeiting all seniority you hold with Consolidated Rail Corporation."*

The Claimant wrote to the Division Engineer on June 27, 1988, requesting a six (6) month leave of absence so that he could establish seniority in an outside job that he had just started and stating that he would like to keep his job at Conrail as an option to the outside job due to the uncertain economic times.

The Claimant's request was denied by the Division Engineer in a letter dated August 25, 1988. The letter informed the Claimant that due to the over-load of work in the Toledo area, all furloughed men in the Toledo District had been recalled and that Claimant could not be spared. The last paragraph of the letter stated that:

> *"Please arrange to contact the assignment clerk in this office for a return to work physical. Failure to do so will result in your forfeit of all seniority with the Consolidated Rail Corporation."*

The Claimant asserts that he was not notified that his request for leave was

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denied in 1988. The Claimant did not respond to the Division Engineer's letter and did not report for work pursuant to the recall notice and, according to the Carrier's submission, the Carrier determined that the Claimant had forfeited his seniority under the self-executing provisions of Rule 4, section 3 of the Conrail-BMWE Agreement.

In the early part of July 1989, the Claimant was informed by Conrail Employees that the Toledo Seniority District had recalled all furloughed Employees. The Claimant inquired about his status in the Dearborn Division Office and was told by the Clerk that his name was on the 1989 Seniority Roster. The Clerk sent him return-to-work papers dated July 18, 1989. The Claimant passed a physical and reported for work on August 1, 1989, but was told that he was not on the seniority roster and for that reason he was not allowed to make a displacement.

Rule 4, Section 3, of the applicable agreement, reads as follows:

"RULE 4 - SENIORITY

Section 3. Return to service.

An employee not in service will be subject to return to work from furlough in seniority order to any class in which he holds seniority in his working zone (either divisional or inter-regional). If he fails to return to service within ten (10) days from date notified by certified mail to his last recorded address for a position or vacancy of thirty (30) days or more duration, he will forfeit all seniority under this Agreement. Forfeiture of seniority under this paragraph will not apply when an employee furnishes satisfactory evidence that failure to respond within ten (10) days was due to circumstances beyond his control. Copy of recall letter shall be furnished the designated union representative."

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From review of the whole record, the Board concludes and finds that the claim is not supported by the record and that a denial award is therefore in order.[1]

The recall of the Claimant to service by the Division Engineer's letter of June 23, 1988, is the controlling consideration in this matter. The Carrier was under no obligation to grant the Claimant a leave of absence, for the reasons stated in his letter of June 27, 1988, and therefore, unless the requested leave was in fact granted, the June 23 recall notice remained in effect. In view of these considerations, the Claimant's assertion that he did not receive notice from the Carrier that his request for leave was denied has no relevance in the determination of the herein claim.

The recall notice was sent to and received by the Claimant on or about June 23, 1988. The Claimant did not report for work within ten (10) days from the recall notice. Therefore, under the self-executing provisions of Rule 4, Section 3 of the Conrail-BMWE Agreement, the Claimant forfeited his seniority under the rule. The fact that the Claimant's name was on the Assignment Clerk's Roster by mistake does not alter the workings of the forfeiture rule.

In view of the foregoing, and based on the whole record, the claim will be denied.

[1] All prior authorities submitted for the record have been considered and analyzed in arriving at this decision.

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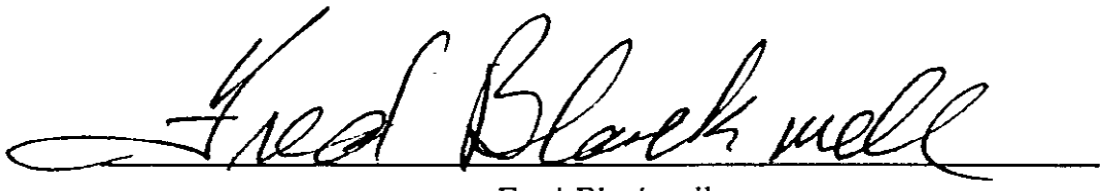

Fred Blackwell
Chairman / Neutral Member
Public Law Board No. 3781

April 26, 1995

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AWARD

The record does not support the claim.

The Carrier properly determined that the Claimant had forfeited his seniority under the self-executing provisions of Rule 4, Section 3 of the Conrail-BMWE Agreement. Accordingly, the claim is hereby denied.

BY ORDER OF PUBLIC LAW BOARD NO. 3781.

Fred Blackwell

Fred Blackwell, Neutral Member

J. H. Burton, Carrier Member

Executed on 10-16, 1995

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