

PROCEEDINGS BEFORE PUBLIC LAW BOARD NO. 3781

AWARD NO. 75

Case No. 75

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:

Claim of the Brotherhood (MW-641) that:

The Carrier violated the Scope, Rule 1, and Rule 3, when they used B&B Mechanics to operate a fuel truck to fuel track equipment, backhoes, front end loader, etc., November 28 through December 23, 1988.

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

This dispute arises from a claim filed on January 6, 1989, by Claimant G. E.

Kilmer, who alleges that while he was furloughed from his position as a Vehicle Operator, the Carrier improperly assigned two (2) Welders in the Carrier's Bridge and Building Department to operate a fuel truck to fuel track equipment used by a B&B Gang that was working on a bridge in North Port Byron, New York. The Claimant alleges that the fuel truck that refueled track equipment should have been operated by a qualified Maintenance of Way Vehicle Operator and compensation is requested for the B&B Welders' work of refueling the track equipment in the claim period.

The record reflects that in November and December 1988, a Surfacing Gang from the BMW Track Department was working in conjunction with a Bridge and Building Department (B&B) Gang that was working on a bridge at North Port Byron, New York. The Surfacing Gang was using two pieces of mechanized track equipment, a backhoe and a front-end loader. The Surfacing Gang normally refueled the backhoe and the front-end loader from an eighty (80) gallon fuel tank. Because the fuel tank method of refueling the track equipment was cumbersome and limiting, and because the use of the fuel truck to refuel the track equipment had efficiency advantages over the use of the eighty gallon fuel tank to refuel the equipment, a fuel truck assigned to the B&B Department to refuel electric welders was also used to refuel the Surface Gang's track equipment.

The Organization asserts that the Carrier's actions in this matter violated the Scope Rule, Rule 1 and Rule 3 of the Conrail-BMWE Agreement. More specifically, the Organization submits that the Carrier is incorrect in its contention that the agreement allows the Carrier to use Employees from one classification to perform the work of

another classification, especially when the Carrier has furloughed Employees from the latter classification. The Organization further submits that the B&B Welders' operation of the fuel truck to fuel the track equipment was not an occasional use of an Employee in another classification, and that, instead, it was the regular use of the B&B Welders out of classification every day from November 28 through December 23, 1988.

The Carrier submits that the Carrier's action of directing two (2) B&B Mechanics to refuel Track Department equipment as needed was in compliance with the applicable agreement, because Rule 19 and the Scope Rule expressly allow Employees in one classification to perform work of another classification in addition to their regular duties. The Carrier submits further that the refueling of the track equipment took less than fifteen (15) minutes to perform, when refueling was necessary, and that such refueling of the Track Department equipment was incidental to the work normally performed by the B&B Mechanics in their assigned positions as Structural Welders, since the electric welding machines are refueled by the Welders themselves.

The pertinent provisions of the Scope Rule and Rule 19 read as follows:

"SCOPE RULE

* * *

This listing of the various classifications in Rule 1 is not intended to require the establishment or to prevent the abolishment of positions in any classification, nor to require the maintenance of positions in any classification. The listing of a given classification is not intended to assign work exclusively to that classification. It is understood that employees of one classification may perform work of another classification subject to the terms of this Agreement.

RULE 19 - ASSIGNMENT TO HIGHER OR LOWER RATED POSITIONS

An employee may be temporarily assigned to different classes of work within the range of his ability. In filling the position which pays a higher rate, he shall receive such rate for the time thus employed, except, if assigned for more than four (4) hours, he shall receive the higher rate for the entire tour. If assigned to a lower rated position, he will be paid the rate of his regular position."

* * * * *

From review of the whole record,¹ the Board finds that it was permissible under the Scope Rule and Rule 19 of the applicable agreement for the Carrier to assign B&B Mechanics to perform the out-of-class incidental work of refueling the track equipment used by the B&B Gang in performing work on a bridge at North Port Byron, New York. The credible information of record shows that the fueling of the track equipment took about fifteen (15) minutes to perform, when refueling was necessary. Therefore, the refueling work was temporary in nature and was incidental to the regular duties of the two (2) B&B Mechanics who performed the refueling work. This would hold true even if the refueling had taken twice the time shown by the record and therefore, the Carrier was under no obligation to recall an Employee from furlough to perform temporary and/or incidental work that an on duty Employee is allowed to perform.

The foregoing findings are reinforced by this Referee's ruling in Award No. 22 of Public Law Board No. 3781 (12-29-88), wherein the subject Scope Rule was construed to permit temporary cross class assignments such as the assignment of Track Department work to B&B Mechanics that occurred in this case:

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

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"The last two sentences of the quoted portion of the Scope Rule clearly declares that the Rule 1 listing of classification is not intended to secure work 'exclusively' to any listed classification and that Employees in one classification may perform work of another classification, such as the herein situation of a Repairman performing B&B Mechanic work by assisting a B&B Mechanic in rebuilding a concrete floor."

In view of the foregoing, and based on the record as a whole, the Board concludes that the disputed assignment of the B&B Mechanics to fuel the track equipment used in conjunction with the bridge work by the B&B Gang was contractually permissible and that the claim must therefore be denied.

A handwritten signature in cursive script, reading "Fred Blackwell", written over a horizontal line.

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

April 26, 1995

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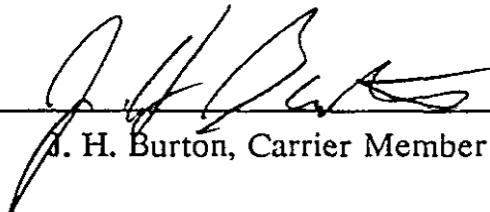
AWARD

The disputed work assignment was contractually permissible and the Carrier did not violate the agreement. Accordingly, the claim is hereby denied.

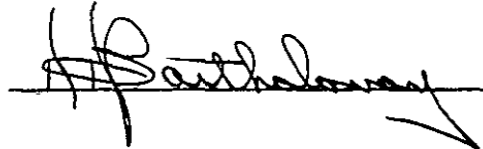
BY ORDER OF PUBLIC LAW BOARD NO. 3781.



Fred Blackwell, Neutral Member



J. H. Burton, Carrier Member



Executed on 10-16, 1995

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