

PROCEEDINGS BEFORE PUBLIC LAW BOARD NO. 3781

AWARD NO. 76

Case No. 76

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-916) that:

The Carrier violated Rule 3, when the Carrier's supervisor removed Claimant Dale E. Laird from the backhoe and assigned the machine to a junior operator. Claimant was qualified and available to perform the work involved and was entitled to the work.

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 August 1, 1989, on behalf of Claimant

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Dale E. Laird, on the basis of allegations that the Carrier improperly removed the Claimant from his position as the Operator of a Backhoe machine in the Trim Gang at Rochester, New York, and assigned the machine to junior Class 2 Machine Operator P. A. Winter during the week of July 10 through 14, 1989. The Claimant held his Backhoe Operator position pursuant to his prevailing bid on "Bid Bulletin #89-18".

The pertinent facts are that on the claim dates of July 10 - 14, 1989, a gang from the Carrier's Bridge and Building Department started digging a ditch for the installation of a water line. The ditching work required the use of one of the Carrier's backhoes and the Carrier directed the Claimant to operate a backhoe to assist the B&B Department in digging the ditch. The ditch was not completed during the first week of the B&B project. The following week, July 10 - 14, 1989, the Carrier directed Class 2 Machine Operator P. A. Winter to operate the backhoe machine to assist the B&B Gang with the ditch digging required by water line installation.

Both Claimant and Mr. Winter worked as Class 2 Machine Operators for the Track Department on the Buffalo Division at all times pertinent to the claim and both earned the same rate of pay.

In these circumstances the Organization asserts that the Carrier's use of junior Class 2 Machine Operator Winter, rather than the Claimant, for the disputed work violated Rule 3, Section 4, and Rule 17 of the agreement. Compensation is requested for Claimant for ten (10) hours straight time at the Backhoe Operator's rate, plus two (2) hours overtime for July 10 through 13, 1989, and ten hours overtime for July 14, 1989.

The Carrier submits that the procedures in Rule 3, Section 4, which govern the assignment of an Employee to a particular position or vacancy, have no application to the claim because the confronting facts show that there was no position or vacancy open to be filled and that bidding or bumping into a new or different position was not involved. The Carrier submits further that since both the Claimant and Mr. Winter were incumbents on Class 2 Machine Operator positions in different gangs on the claim dates, the Carrier was free to select the Class 2 Machine Operator that it deemed to be more appropriate and available to assist the B&B project, and that the Carrier exercised this authority by assigning the Claimant to the first week and Mr. Winter to the second week of the project.

The Carrier further submits that Rule 17 does not support the claim because the work of operating the backhoe to assist the B&B Gang was assigned to Mr. Winter as part of his regular duty assignment during regular working hours; therefore, the overtime work relating to the ditching project performed by Mr. Winter, being an extension of the same work performed by him during the course of his work day or week, was properly assigned to Mr. Winter under the preference provision in Rule 17.

Rule 3, Section 4, and Rule 17, in pertinent part read as follows:

"Rule 3

Section 4. Filling temporary vacancies.

(a) A position or vacancy may be filled temporarily pending assignment. When new positions or vacancies occur, the senior qualified available employees will be given preference, whether working in a lower rated position or in the same grade or class pending advertisement and award.

Rule 17 - PREFERENCE FOR OVERTIME WORK

Employees will, if qualified and available, be given preference for overtime work, including calls on work ordinarily and customarily performed by them during the course of their work week or day in the order of their seniority."

* * * * *

From full review of the whole record,¹ the Board finds that it was contractually permissible for the Carrier to use the Claimant and Mr. Winter, in successive weeks, to operate a Backhoe to assist the B&B Gang in the installation of a water line and therefore the record does not show an agreement violation by the Carrier.

Both the Claimant and Mr. Winter were Class 2 Machine Operators in the Track Department on the Buffalo Division, earning the same rate of pay, in the week before and the week of the claim period. Nothing in the agreement prohibited the Carrier from choosing either the Claimant or Mr. Winter to perform the work in question. The Carrier's use of the Claimant for the backhoe work during the first week of the B&B water line project did not require the Carrier to use the Claimant during the second week, July 10 - 14, 1989. The assignment of Class 2 Machine Operator Winter to assist in the second week of the B&B project was merely a change of the work location in the performance of the duties already assigned to Mr. Winter's position.

The Carrier could have assigned the operation of the backhoe on the B&B project to the Claimant during both weeks of the need for a backhoe on the project; however, the Carrier's decision to use a different Class 2 Machine Operator during the

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

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second week of the B&B project was within the Carrier's agreement authority and the Claimant did not lose any of the wages of his regular assigned job by the Carrier's action.

The overtime that Mr. Winter earned during the week of July 10 - 14, 1989, accrued to him under the preference provisions of Rule 17 because he was assigned to the backhoe during the regular work day on which the overtime arose; if overtime had developed while the Claimant was assisting the B&B Department, he would have had preference to that overtime.

The Carrier's actions in this matter represent a normal exercise of the Carrier's right to direct the work force. It is well settled that Management has the sole authority to determine where equipment shall be located and that seniority does not follow equipment. See this Neutral's holding on this point in Award No. 29, Public Law Board No. 3781 (06-05-89).

In view of the foregoing, and based on the record as a whole, the claim will be denied for lack of record support.

A handwritten signature in cursive script that reads "Fred Blackwell". The signature is written in dark ink and is positioned above a horizontal line.

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

April 26, 1995

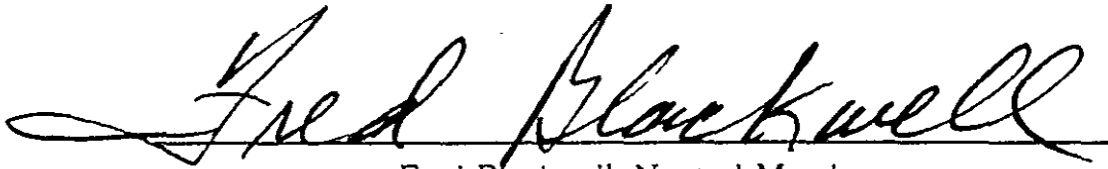
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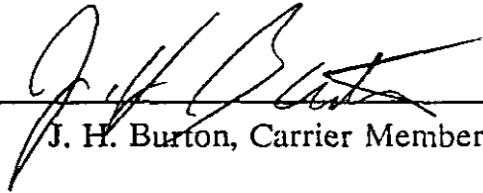
AWARD

The Carrier did not violate the agreement. Accordingly, the claim is hereby denied for lack of record support.

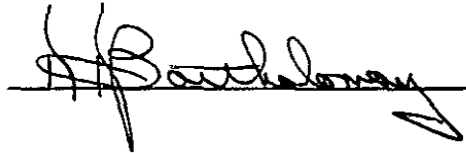
BY ORDER OF PUBLIC LAW BOARD NO. 3781.



Fred Blackwell, Neutral Member



J. H. Burton, Carrier Member



Executed on 10-16, 1995

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