

PUBLIC LAW BOARD NO. 4259

Award No. 2

Case No. 2

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

and

National Railroad Passenger Corporation (AMTRAK)

Statement of Claim

1. The Carrier violated the Agreement when it refused to allow Mr. D. S. Turner to displace junior employee Mr. C. Graves as cook on the Grundy MW Base Tie Gang on September 22, 1985.

2. Because of the aforesaid violation, Mr. D. S. Turner shall be allowed ten (10) hours of pay at the applicable cook's straight time rate.

Findings and Opinion

The Board, upon consideration of the entire record and all of the evidence finds:

The parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended.

This Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due and proper notice of hearing thereon.

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Claimant holds seniority as a cook in the Southern District and was displaced from his regular assignment. On September 22, 1985, claimant attempted to displace a junior employee, Mr. C. Graves, who was filling a temporary vacancy as a cook on the Grundy Base Tie Gang. The hours of the gang were from 10:00 a.m. to 8:00 p.m.

Claimant alleges that he reported to the Grundy MW Base Tie Gang at 9:30 a.m. to exercise his seniority rights to displace a junior employee. In addition to the statement of claim, Claimant submitted a memorandum indicating:

Here are a list of persons who could verify that on the day of 9/22/85 on or about 9:30 am Mr. Dorcine S. Turner did so report to Grundy Base Tie Gang unit to displace the vacancy, which Mr. Charlie Graves was filling as cook on the dinner shift.

1. Mr. Charles Grave (sic) signed Charles J. Graves
2. Mrs. L. S. Harris
3. Mr. D. Love, signed D. Love.

In denial of the claim, the Carrier relied on the following statement by the foreman of the gang:

On September 22, 1985, Mr. Turner showed up at the job assigned on or about 1:00 PM stating that he wanted to bump Mr. Graves. I asked him for the related paperwork, and he could not present it; therefore, I denied him bumping rights until he could come up with the paperwork.

Rule 4, which is entitled "Temporary Positions and Vacancies

- Method of Filling" states:

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

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(b) An employee so assigned may be displaced by a senior employee working in a lower rated position or in the same grade or class, provided displacement is made prior to the starting time of the assigned tour of duty, by notice to the Foreman or other officer in charge. The latter employee will not be subject to displacement from such temporary assignment by senior employee.

Also contained in the record is a memorandum to "All BMWE track department employees", from G. E. Ellis, involving the "Procedures for Force Reduction and Furlough", which is dated Nov. 5, 1984, and states:

2. All employees desiring to displace another must appear at the appropriate tool house/headquarters prior to the start of the tour of duty of the person to be displaced. All displacements will be handled by the foreman at the start of the tour of duty. Displacements are not processed by the Track Supervisor's Office or the Philadelphia Bulletin and Assignment Office.

It is the Carrier's contention that the claim should be denied for failure of proof since it states that there is a conflict between the statement made by claimant and the one submitted by his foreman. As a technical matter this is not exactly true since all the foreman's statement does is say that the Claimant appeared at 1:00 p.m. His statement does not say anything at all about whether Claimant appeared at 9:30 a.m. Furthermore, since the Claimant in support of his claim offered the names of three other individuals who he stated would be able to verify the fact that he had appeared at 9:30 a.m., the Carrier was under an obligation to at least interview these individuals to get their statements if it did not wish to believe

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Claimant.

The Carrier also contends on the basis of the foreman's statement that Claimant did not furnish the proper documentation to support his claim. It is clear that the Carrier has by memorandum established a rule which on its face is not inconsistent with the collective bargaining agreement between the Carrier and the Organization representing its employees which requires that the displacing employee either possess the Displacement Form issued or "demonstrate that your name appeared on one of the numerous Job Abolishment Notices..."

Again, the Carrier is asking the Claimant to do more than it is asking its supervisors. The ambiguity of the foreman's statement extends not only as to whether he was aware of Claimant's appearance at the job at 9:30 a.m., but also as to whether Claimant had the requisite job abolishment notice at 9:30 a.m. Even if claimant did not have a displacement notice with him, the Carrier by its own rules provides for an alternative method of proof of entitlement to displacement that is, listing on a Job Abolishment Notice. It is clear the foreman expected Claimant to produce the displacement form and did not look any further.

Award

The Claim is sustained. Payment of the claim shall be

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made within thirty (30) days of the date of this award.

Robert O. Harris
Robert O. Harris
Chairman and Neutral Member

J. Dodd
J. Dodd
For the Organization
[Concur / Dissent]

dated, August 8, 1988
Philadelphia, PA

L. C. Hriczak
L. C. Hriczak
For the Carrier
[Concur / Dissent]

While acknowledging that the Carrier's displacement procedures are not inconsistent with the Collective Bargaining Agreement, the Chairman and Neutral Member attempts to change them which clearly exceeds his authority.