

PUBLIC LAW BOARD NO. 4259

Award No. 4

Case No. 4

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

and

National Railroad Passenger Corporation (AMTRAK)

Statement of Claim

- 1) That the Carrier violated the Agreement when Shop Supervisor P. Ketterer refused to allow the Claimant to fill his awarded position of MW Repairman, awarded in M/W System Shop Award 02-MW Shop- 0286.
- 2) that Claimant should be compensated at the MW Repairman rate of \$11.60 per hour for eight (8) hours on each of the following dates due to the violation stated in Claim #1: March 3, 4, 5, 6, 7, 10, 11, 12, 13, 14 and 17, 1986.
- 3) That the Claimant should be compensated for any and all overtime earnings made by D. Prather, the employee utilized in lieu of the Claimant during the period March 3 to 17, 1986, inclusive.

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.

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This Board has jurisdiction over the dispute involved herein.

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

Claimant bid for and was awarded a position as a repairman beginning on March 3, 1986 at Bear. At that time he was on furlough. When Claimant appeared to report for work he was denied the position by the shop supervisor because as a furloughed employee Claimant was not eligible to bid for the job, which had been awarded to him in error. Claimant was paid for the day he reported for work; however, the job was given to a junior employee who was not on furlough. Claimant was recalled to service on March 18, 1986 for another job.

The issue in dispute is the eligibility of furloughed employees to bid on vacant positions. Specifically, the question is whether the seniority rights of a furloughed employee continue while that individual is on furlough or whether seniority is only applicable as a basis for recall or, when recalled, as a basis for differentiation between working employees as to the right to a particular job.

In suggesting that furloughed employees have the right to bid on jobs, the Organization must assume the burden of proving that its interpretation of the agreement between the parties is correct. It has attempted to do so by stating:

that there is no language in the Rules . . . that denies a furloughed employee the opportunity to make application for a position or that allows the Carrier

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to pass over a senior furloughed applicant, and award a position to a junior, active-duty applicant.

It has cited the following rules as applicable:

Rule 1 - ASSIGNMENT TO POSITION

In the assignment of employes to positions under this Agreement, qualification being sufficient, seniority shall govern.

The word "seniority" as used in this Rule 1 means, first, seniority in the class in which the assignment is to be made, and thereafter, in the lower classes, respectively, in the same group in the order in which they appear on the seniority roster.

RULE 2 - QUALIFICATIONS FOR POSITIONS

In making application for an advertised position or vacancy, or in the exercise of seniority, an employe will be permitted, on request, or may be required, to give a reasonable, practical demonstration of his qualifications to perform the duties of the position.

RULE 3 - ADVERTISEMENT AND ASSIGNMENT TO POSITION

(a) All positions and vacancies will be advertised within thirty days previous to or within five days following the dates they occur, except that temporary vacancies need not be advertised until the expiration of thirty days from the dates they occur.

(b) Advertisement will show whether the positions or vacancies are of a permanent or temporary nature, and will be posted for a period of seven days at the headquarters of the gangs in the sub-department of employes entitled to consideration in filling the positions, during which time an employe may file his application.

(c) Application for new position or vacancy advertised under this Rule 3 must be prepared on Bid Form with receipt attached thereto, properly filled out, and filed with the official whose name appears on the advertisement, who will detach receipt, sign, and return same to the applicant.

(d) Awards will be made and bulletin announcing the name of successful applicant will be posted within seven days after the close of the advertisement.

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This rule shall not be construed so as to require the placing of employees on their awarded positions when properly qualified employees are not available at the time to fill their places, but physical transfers must be made within ten days.

(e) An advertisement may be cancelled within seven days from the date advertisement is posted.

(f) An employee who desires to withdraw his bid or application for an advertised position or vacancy must file his request, in writing, with the official whose name appears on the advertisement within seven days from the date the advertisement is posted.

(g) Nothing in these rules prohibits the Management from employing mechanics and according them seniority when there are no helpers qualified as mechanics.

The Organization stated in its appeal from the initial denial of the claim that ". . . past practice of the assignment office in Philadelphia has been to award the senior employee, whether furloughed or not [the bid]." Subsequent to that statement in a letter dated April 2, 1986, no evidence to support that assertion has been submitted to this Board. The Board is therefore forced to conclude that it has not been the practice of the Carrier regularly to award jobs to furloughed employees.

In denying the claim, the Carrier has cited two rules which it believes bear on the question of the status of furloughed employees:

RULE 29 - ACCEPTING POSITIONS UNDER OTHER AGREEMENTS

Except as provided in Rule 12, an employee coming within the scope of this Agreement who accepts a position coming within the scope of any other Agreement for more than fifteen (15) days in a calendar year, without having his seniority protected by an Agreement, in writing, between the Chief Engineer and General Chairman, will forfeit all seniority under this

Agreement.

RULE 64 - CLAIMS FOR COMPENSATION - TIME LIMITS FOR FILING

(a) All claims and grievances alleged to be due made by or in behalf of employes must be presented, in writing, within sixty (60) days from the date of the occurrence on which the claim is based in accordance with the following provisions of this Rule, except:

(1) Time off duty on account of sickness, leave of absence, suspension or reduction in force, will extend the time limits as specified in this Rule 64.

(2) When a claim for compensation alleged to be due is based on an occurrence during a period employe was out of service due to sickness, leave of absence, suspension or reduction in force, it must be made, in writing, within sixty (60) days from the date the employe resumes duty.

This Board is faced with interpreting an agreement which does not specifically deal with the problem raised and where there is no clear indication that past practice favors the interpretation desired by the Organization. On the contrary, the method of posting of notice of the job at the headquarters of the gang [Rule 3(b)], is at a place where active employees, rather than furloughed employees, would receive notice of the position. The method of posting would work a disadvantage on furloughed employees since they would not have timely notice or an opportunity to respond to the notice.

The interpretation urged by the Organization seems strained. This Board doubts, without proof to the contrary, that the Organization, by agreement, would have voluntarily placed its furloughed members at a disadvantage in learning about, and

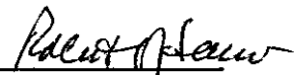
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bidding for, positions when it, in Rule 64, made sure that all employees who were not regularly at the work place would have the period of time allowed for the filing of claims to be tolled until they returned to regular employment. It is, furthermore, true that furloughed employees are not in the active service of the Carrier and because of the seasonal nature of the work are placed in such furloughed status so that the Carrier is not required to provide all of the benefits that active employees may enjoy.

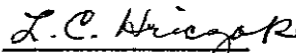
In sum, it appears to this Board that the Organization has not sustained its burden of proof in showing that its claimed interpretation of the contract is correct either because of the language of the agreement itself, or through the use of past practice by the parties.

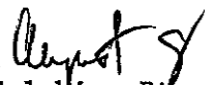
Award

Claim denied.


Robert O. Harris
Chairman and Neutral Member


J. Dodd
For the Organization
[Concur / Dissent]


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

dated, , 1988
Philadelphia, PA