

PROCEEDINGS BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1016

AWARDS NO. 102 & 103

Cases No. 102 & 103
Referee: Michael Fischetti

Carrier Member: J.H. Burton Labor Member: M.J. Schappaugh

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

vs.

CONSOLIDATED RAIL CORPORATION

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier assigned Cleveland District employees J. Goodgame, E. Wilson, B. Cruxton, H. Cowger, W. Irvine, D. Shuler, B. Weaver, D. Schmidt and W. Dickenson to install a switch at Hudson, Ohio, located on the Youngstown Seniority District, on September 20 and 21, 1993, instead of calling and assigning Youngstown Seniority District employees A. Girard, W. Flower, M. Lane, H. Miller, C. Sticklemeyer, B. Byrne, R. Metzger, J. Bowman and P. Girard to perform said work (System Docket MW-3324).

(2) The Agreement was violated when the Carrier assigned Cleveland District Machine Operator Cowger to perform track material handling and cleanup work at Hudson, Ohio, located on the Youngstown Seniority District, on November 8 through 12, 1993, instead of calling and assigning Youngstown Seniority District Machine Operator P. Girard (System Docket: MW-3348).

(3) As a consequence of the violation referred to in Part (1) above, Messrs. A. Girard, W. Flower, M. Lane, H. Miller, C. Sticklemeyer, B. Byrne, R. Metzger, J. Bowman and P. Girard shall each be allowed eight (8) hours' pay at their respective straight time rates and six (6) hours' pay at their respective time and one-half rates for September 20, 1993 and eight (8) hours' at their respective straight time rates and three (3) hours' pay at their time and one-half rates for September 21, 1993.

(4) As a consequence of the violation referred to in Part (2) above, Mr. P. Girard shall be allowed forty (40) hours' pay at his Class 1 Machine Operator's rate and ten (10) hours' travel time.

Findings:

Upon the whole record and all the evidence and hearing in the Carrier's Office in Philadelphia, PA, 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.

OPINION

The Claimants contend that the Carrier violated the Agreement when it assigned employees with seniority confined to the Cleveland Seniority District to perform track maintenance work, i.e., installing a switch and related cleanup work, on the Youngstown Seniority District.

The Claimants further contend that they were available, willing, fully qualified and would have expeditiously performed the subject work had the Carrier assigned them to do so. Moreover, the claimants contend that the Carrier has failed to support its affirmative defenses.

The Carrier contends that the Claimants are not entitled to any additional compensation concerning the dates in dispute. Moreover, the Carrier further contends that Claimants Flower and Lane are not entitled to any additional compensation for the date of September 21, 1993 because neither claimant was available for service on that date.

The Carrier acknowledged on the property that it improperly assigned a Cleveland Seniority District employee to perform service on the Youngstown Seniority District. Accordingly, the issue before the Board is concerned with the proper remedy in this instant case for the violation of Rule 4 and Appendix "C" of the Agreement. Both the Organization and the Carrier have presented numerous cases supporting their respective positions. The Carrier has demonstrated that authorities have awarded compensation only in those instances where Claimants have shown a monetary loss from their regular work assignments in connection with the violation. On the other hand, the Organization has demonstrated that contra authorities have ruled that full employment does not negate a compensatory award in those instances where there is a valid need to preserve the integrity of the Agreement.

Seniority districts and seniority rights have been carefully negotiated into the Agreement between the parties. In that context they become important factors in the maintenance of the integrity of the Agreement. Accordingly, each employee possesses a vested right to perform work in that seniority district that accrues to his standing and status on the district seniority roster. Because of the importance of this principle,

compensation is warranted so as to preserve the integrity of the Agreement. That need does not, however, extend to the claims herein regarding overtime and travel time. Hence, these elements of the compensation claim are denied..

This Award shall not be a precedent except in circumstances that are the same as the particular circumstances in this instant case.

AWARD

Claim sustained in part and denied in part as per the Opinion.

The Carrier shall comply with the Award within thirty (30) days from the date hereof.

BY ORDER OF SPECIAL BOARD OF ADJUSTMENT NO. 1016

Michael Fischetti

Michael Fischetti, Neutral Member

Mark J. Schappaugh

M.J. Schappaugh, Labor Member

J.H. Burton

J.H. Burton, Carrier Member

Executed on

1/14/97

Conrail/BMWE/SBA 1016/102-103