SPECIAL BOARD OF ADJUSTMENT 1016

Award No. 164
Case No. 164

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Consolidated Rail Corporation

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier improperly assigned junior Foreman M. G. Ylosvai to perform overtime service on the Mon Line in South Pittsburgh, Pennsylvania on August 11, 12 and 13, 1995 (System Docket MM-4221).

2. As a consequence of the aforesaid violation, senior Foreman P. C. Immel shall be compensated for thirty-three (33) hours' pay "at the foreman's time and one half rate with proper credits for vacation and benefits purposes."

FINDINGS:

This Board, upon the whole record and all of the evidence, finds and holds as follows:

1. That the Carrier and the Employee involved in this dispute are, respectively, Carrier and Employee within the meaning of the Railway Labor Act, as amended,; and

2. That the Board has jurisdiction over this dispute.

OPINION OF THE BOARD:

A careful review of the record indicates that the Organization proved that the Carrier assigned a junior employee to perform the disputed work.

Rule 3, titled Selection of Positions, provides in pertinent part:

Section 1. Assignment to position.
In the assignment of employees to positions under this Agreement, qualification being sufficient,

seniority shall govern.

The word "seniority" as used in this Rule 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.

Section 2. Qualifications for positions.
In making application for an advertised position or vacancy, or in the exercise of seniority, an employee will be permitted, on written request, or may be required, to give a reasonable, practical demonstration of his qualifications to perform the duties of the position.

The record omits any credible evidence to substantiate the Carrier's explanation that a reasonable basis existed for the Carrier to conclude that the junior employee possessed the required qualifications to perform the disputed work whereas the senior Claimant lacked such required qualifications. In the absence of such critical evidence, the Carrier failed to provide any basis to support the decision of the Carrier to disqualify and to preclude the senior Claimant from performing the disputed work.

AWARD:

The Claim is sustained in accordance with the Opinion of the Board. The Carrier shall make the Award effective on or before 30 days following the date of this Award.

Robert L. Douglas
Chairman and Neutral Member

R. D. Robinson
Employee Member

D. L. Kerby
Carrier Member

Dated: 9/6/01