

SPECIAL BOARD OF ADJUSTMENT 1016

Award No. 172

Case No. 172

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 assigned junior Trackman J. S. Kmett to perform overtime service working with the grinding train as a fireman, operating a six (6) man pickup truck and performing other trackman duties at various locations on the Pittsburgh Line on September 25, 26, and 28, 1996 instead of assigning senior Trackman R. J. Sida (System Docket MW-4574).
2. As a consequence of the violation referred to in Part (1) above, Mr. R. J. Sida shall be allowed forty-two (42) hours' pay at his time and one-half rate and he shall be allowed proper credits for benefits and vacation 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 17, titled Preference for Overtime Work, provides in pertinent part:

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.


The record reflects that certain confusing circumstances existed at the time of the disputed assignment. The Carrier made a good faith affirmative effort to identify the appropriate senior employee to perform the disputed work. Notwithstanding this effort, the record reveals that the Claimant elected to remain silent during this critical period of time.

Under these special circumstances, the Claimant had a duty to speak to indicate that he had the requisite seniority to obtain the assignment to perform the disputed work. In the absence of such a minimal communication by the Claimant at the relevant time, the Claimant is equitably estopped from asserting his undisputed seniority on a retroactive basis. Insufficient evidence therefore exists to prove that the Carrier committed a contractual violation by assigning the disputed work to the junior employee under the unusual circumstances set forth in the record.

AWARD:

The Claim is denied.


Robert L. Douglas
Chairman and Neutral Member


R. D. Robinson
Employee Member


D. L. Kerby
Carrier Member

Dated: 9/6/01