Award No. 178
Case No. 178

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Nay 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 West Regional Production Gang employe S. Stacy to perform work on the East Regional Gang Seniority District on December 11, 12 and 13, 1995 instead of calling and assigning senior furloughed employe L. R. Brubaker to perform said work (System Docket MN-4223).

2.   As a consequence of the violation referred to in Part (1) above, Mr. L. R. Brubaker shall ". . . be allowed all wages earned by the junior Stacy during the claimed period while working in the East Region.

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:

The record indicates that the Carrier assigned an employee from a different seniority district to perform the disputed work.

Rule 3 (Selection of Positions) provides, in pertinent part, that:

Section 4.   Filling temporary vacancies.
     (a) A position or vacancy may be filled temporarily pending assignment. When new positions or vacancies occur, the senior qualified available

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employees will given preference, whether working in a lower rated position or in the same grade or class pending advertisement and award.

When furloughed employees are to be used to fill positions under this Section, the senior qualified furloughed employees in the seniority district shall be offered the opportunity to return to service. Such employees who return and are not awarded a position or assigned to another vacancy shall return to furlough status.

(e) The word "senior" as used in paragraph (a) of this Section means, first, senior *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 the classes appear on the seniority roster.

Rule 4 (Seniority) provides, in pertinent part, that:

Section 3. Return to service.
An employee not in service will be subject to return to work from furlough in seniority order in any class in which he holds seniority in his working zone (either Divisional, *Zone* or Regional).

Rule 17 (Preference for Overtime Work) provides, in pertinent part, that:

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 disputed work involved snow duty and at least initially involved an emergency situation. This particular emergency therefore provided a sufficient basis for the Carrier to assign the disputed work to an employee from a different seniority district rather than to the Claimant, who was on furlough at the time.
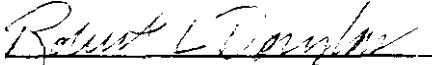
The Carrier, however, failed to initiate any attempt to contact the Claimant after the Carrier had concluded that the disputed work would extend for two additional days. By failing to attempt to contact the furloughed Claimant to perform snow duty on the two following days (December 12 and December 13, 1995), the Carrier failed to comply with the referenced contractual provisions.
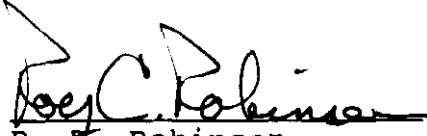
With respect to an appropriate remedy, the Carrier shall

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compensate the Claimant for ten (10) straight time hours and two
(2) overtime hours on December 12, 1995 and for ten (10) straight
time hours and two and one-half (2½) overtime hours *on* December
13, 1995.

AWARD:

The Claim is partially 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. C. Robinson   D. L. Kerby
Employee Member   Carrier Member

Dated: _____9/6/01_____