

SPECIAL BOARD OF ADJUSTMENT 1016

Award No. 180
Case No. 180

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 Cleveland Youngstown Seniority employee R. **Jeter** to perform work on Tie Gang TO 402 on the Pittsburgh Seniority District beginning June 9, 1997 and continuing, instead of calling and assigning Pittsburgh Seniority District employee J. Cypher to perform said work (System Docket MW-4978).
2. As a consequence of the violation referred to in Part (1) above, Mr. J. Cypher shall be allowed "... ten (10) hours a day, all overtime, to be credited with day and month, to be made whole."

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 a furloughed employee to perform the disputed work (operating a Spiker/Lag Drill) instead of assigning the Claimant, who also was a furloughed employee.

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 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. The word "**senior**" as used in paragraph (b) of this Section means either senior in the class in which the assignment has been made or senior in the highest class in the same group in which the employee assigned holds seniority.

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).

Section 5. Seniority districts.

(a) The operating division seniority districts shown in Appendix '**C**' and the following separate seniority districts are established:

(b) The following seniority districts for Regional Production Units in the Track Department are shown in Appendix '**E**':


Seniority District - Eastern Zone
- Western Zone

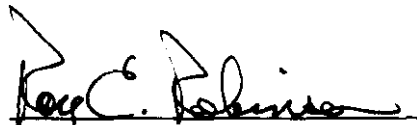
(c) The seniority districts hereby established may only be changed by agreement between the Senior Director-Labor Relations and the involved General Chairman. When the territory of an operating division is subsequently changed, either party may request a meeting to negotiate changes in seniority districts.

The record indicates that the Claimant did not possess greater seniority as a qualified Spiker/Lag Drill Operator than Mr. Jeter. In the absence of such required qualifications at the relevant time, the Claimant's greater Track Department seniority lacked relevance. Insofar as the claim specifically covered the period from June 9, 1997 through June 30, 1997, no other matters raised by the parties affect the disposition of the dispute.

AWARD:

The Claim is denied.


Robert L. Douglas
Chairman and Neutral Member


R. J. Robinson
Employee Member


D. L. Kerby
Carrier Member

Dated: 9/6/01