

SPECIAL BOARD OF ADJUSTMENT 1016

Case No. 192

Award No. 192

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 recalled junior employee (sic) E. L. Harrell to perform snow removal service in the Washington D.C. area on January 10 through 19, 1996, instead of recalling senior employee (sic) R. J. Minnier to perform said work.
- (2) As a consequence of the violation, Mr. R. J. Minnier shall be compensated for all wages paid to the junior man January 10 to January 19, 1996, with any lost credits and/or benefits normally due to be allowed him.

FINDINGS:

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

That the parties were given due notice of the hearing;

That the Carrier and Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act as approved June 21, 1934;

That this Board has jurisdiction over the dispute involved herein.

The material facts that led to this claim are not in dispute. On or about January 8, 1996, Conrail's Harrisburg Seniority District experienced a significant snowstorm. Over 30 inches of snow fell in a 24-hour period on the east coast. The Carrier recalled Trackman E. L. Harrell from furlough to remove snow in the Washington D.C. area. Trackman Harrell worked from January 10 through January 19, 1996, on snow removal work.

On February 29, 1996, the Organization filed a time claim on behalf of the Claimant, a furloughed Trackman on the Harrisburg Division. It is the Organization's position that the Claimant was senior to Trackman Harrell on the Harrisburg Division and therefore he should have been recalled from furlough before Mr. Harrell. The Organization requested that the Claimant be made whole for the wages earned by the junior employee from January 10 through January 19, 1996, less his earnings after January 15 when he was recalled to service.

The Carrier denied the time claim contending that it experienced an emergency situation when a severe snowstorm devastated the Eastern territory of its system. Conrail maintains that because of this emergency it had the latitude to use available personnel to return its territory to service.

Under ordinary circumstances, Rule 3, Section 4(a), of the BMW-CONRAIL Agreement requires the Carrier to fill temporary vacancies with the senior qualified employee in the seniority district. There is no question that the Claimant was qualified to perform snow removal work. He and employee Harrell were both Trackmen on the Harrisburg Division in January 1996.

This Board recognizes that in an emergency management has wide latitude to assign employees in order to return operations to normal as quickly as possible. Nevertheless, even with this wide latitude, a carrier is obligated to make a reasonable effort to contact the proper employee(s) who are entitled to the work. In the instant case, Conrail did not fulfill that obligation.

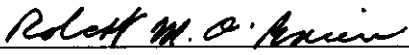
There is no evidence in the record before this Board that the Carrier made any effort to contact the Claimant for the snow removal work in Washington, D.C. It is noteworthy that he and Trackman Harrell both resided in Harrisburg, Pennsylvania in January 1996. Why the Claimant was not offered this temporary work, as the senior furloughed qualified employee, was never explained.


It is immaterial whether the Claimant *ordinarily and customarily* performed snow removal during his workweek or workday under the circumstances of this case. In our view, he had as much claim to this work as employee Harrell. As noted previously, the Claimant and Mr. Harrell were both Trackmen on the Harrisburg Division. As the senior furloughed qualified employee on the seniority district the Claimant should have been offered the temporary work given to Trackman Harrell.

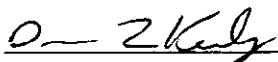
In its time claim, the Organization requested that the Claimant be made whole for the wages earned by Trackman Harrell from January 10 through January 19, 1996, less wages the Claimant earned subsequent to January 15 when he was recalled from furlough. The Carrier never took exception to this requested remedy. Therefore, the claim must be sustained as presented.

AWARD: Claim sustained.

Carrier is directed to make the within Award effective
on or before thirty (30) days from the date hereof.


Robert M. O'Brien, Neutral Member


Roy C. Robinson, Employee Member


Dennis L. Kerby, Carrier Member

Dated: 4/30/02