

PROCEEDINGS BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1016

AWARD NO. 2

Case No. 2

Referee Fred Blackwell

Carrier Member: R. O'Neill

Labor Member: S. V. Powers

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

vs.

CONSOLIDATED RAIL CORPORATION

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it failed and refused to allow Welders L. R. Cheek, M. L. Nooks, M. S. Hughes, J. M. Holler, J. W. Higgonbotham, J. I. Hicks, M. K. Bales, M. R. Haag, B. E. Cummins and L. D. Mangus pay at the welder foreman's rate for the work they performed beginning July 9, 1984 (System Docket CR-1052).

(2) The claimant welders, named in Part (1) hereof, shall each be allowed the difference between what he should have received at the welder foreman's rate and what he was paid at the welder's rate beginning July 9, 1984 and continuing until the violation referred to in Part (1) hereof is discontinued.

FINDINGS:

Upon the whole record and all the evidence, and after hearing on December 5, 1988, in the Carrier's Office, Philadelphia, Pennsylvania, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted by agreement and has jurisdiction of the parties and of the subject matter.

OPINION

This case arises from claims by ten (10) Welders who allege that they should have been paid at the Welder Foreman's

rate for work they performed on and after July 9, 1984.¹

The Organization contends that beginning on or before July 9, 1984, the Claimant Welders performed the duty of the Foreman Welder position while assigned on the Columbus Division to a Welder position on Welding Gangs of between three (3) and fourteen (14) men in the classifications of Welder, Welder Helper, and Trackman; and that the Claimants are entitled to be compensated for the difference between the rate of the Welder Foreman and the Welder rate for the period in question.

The Carrier submits that in the exercise of its prerogative to determine what supervision, if any, is needed for the performance of its work, a determination was made that it sufficed for the Carrier's needs to place the Welding Gangs under the jurisdiction of a Supervisor and an Assistant Supervisor who instructed the Gangs where, when, and what duties to perform; and that the assignment of a Foreman Welder was determined to be unnecessary.

Rule 1 of the Schedule Agreement, as pertinent herein, provides the following in respect to the defined duties of the position of Welder Foreman:

"RULE 1 - SENIORITY CLASSES

The seniority classes and primary duties of each class are:

¹ The issues and facts in this case, No. 2, and Cases Nos. 3 and 4, are generally similar and consequently, the submissions in all three (3) cases (2, 3, and 4) have been studied and assessed in making the herein findings.

* * *

C. Welder Roster:

1. Welder Foreman

Direct and work with employees assigned under his jurisdiction."

Inasmuch as the above quoted Rule 1 C. 1. of the applicable Agreement clearly delineates that the duty of a Foreman Welder is to "Direct" other employees, the confronting claims and the record thereon present a fact dispute of whether the Claimants did in fact "Direct" the gang members in the performance of their work. In this regard the Board notes that the initial claim (Employee Exhibit A-1) contains no allegation that the Claimants performed work involving the duty to "Direct" the other gang members; and that such allegation and proof thereof would be necessary to validate the claims. The Board notes further that the necessary allegation is also absent, in the main, from the nine (9) fact-statements from the Claimants submitted after the date of the original claim. However, the necessary allegation is present in the fact-statement of Claimant Hicks, Letter No. 4, which, in pertinent part, reads as follows:

"...Being in charge my duties were supervising welding of others, which at times was 2 or 3 men, and sometimes 5 or 6 men. Showing them how to make welds (the right way)."

The above quoted statement constitutes an allegation that the Claimant involved (Mr. Hicks) performed work involving the duty to "Direct" other employees in his gang; the allegation is not countered or rebutted by evidence elsewhere in the record and

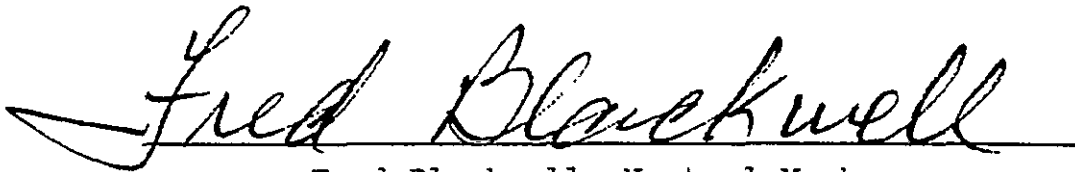
hence it is taken as reflecting the operative facts concerning this claim. This claim is thus found to be valid.

In view of the foregoing, and based on the record as a whole, the claim of Mr. Hicks, Letter No. 4, is supported by adequate evidence in the record as a whole and consequently, this claim will be sustained. All remaining claims are denied for lack of adequate evidentiary support.

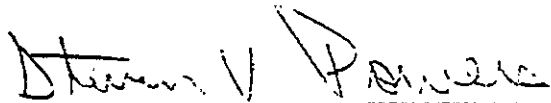
AWARD

The claim of Mr. Hicks, Letter No. 4, is sustained as per the Opinion. All remaining claims are denied as per the Opinion.

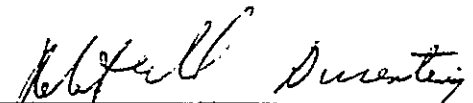
BY ORDER OF SPECIAL BOARD OF ADJUSTMENT NO. 1016



Fred Blackwell, Neutral Member



S. V. Powers, Labor Member



R. O'Neill, Carrier Member

Executed on December 5, 1989

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