

SPECIAL BOARD OF ADJUSTMENT NO. 1016

Parties
to the
Dispute

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

vs.

CONSOLIDATED RAIL CORPORATION

Case No. 20

Awd, 20

STATEMENT OF CLAIM

- (1) The Carrier violated the Agreement when it failed and refused to permit Mr. R. K. Brenner to displace Mr. W. C. Cooper on or about July 1, 1985.
- (2) Division Engineer J. B. Sill failed to disallow the claim presented to him under date of July 9, 1985 as contractually stipulated within Rule 26(a).
- (3) As a consequence of either Part (1) and/or (2) above:

Mr. Brenner's name to be entered on the Vehicle Operators Roster effective July 1, 1985.

OPINION OF THE BOARD

Claimant R. K. Brenner was on vacation from June 17 through June 23, 1985. He returned to work on June 24. While on vacation, Carrier

bulletined a Vehicle Operator's job. The posting closed on June 24, 1985. Claimant had been back to work for one day while the posting was effective. Noone bid the job, including Claimant, and on July 1, 1985, Carrier assigned the job to an employee junior to Claimant. On July 9, 1985, a grievance was filed by the District Chairman protesting Carrier's refusal to allow Claimant to displace the junior employee in accordance with Rule 5(a) of the Agreement. That Rule reads as follows:

RULE 5 - RETURNING TO DUTY AFTER LEAVE
OF ABSENCE, SICKNESS, ETC. - EXERCISE OF SENIORITY

- (a) An employee returning to duty after leave of absence, vacation, sickness, injury duty, disability, or suspension shall return to his former position and may, within five (5) days after his return to his former position, exercise displacement to any position advertised during his absence or may displace any junior employee promoted during his absence, subject to Rule 3, Section 2.

Section 2 reads as follows:

In making application for an advertised position or vacancy, or in the exercise of seniority, an employee will be permitted, on written request, or may be required, to give a reasonable, practical demonstration of his qualifications to perform the duties of the position.

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Carrier argues that Claimant had one day to bid the job and that Rule 5 did not apply in this instance. It also argued that even if Rule 5 did apply, Claimant missed the five-day limit specified in that Rule. He attempted to displace on the Vehicle Operator's job eight days after it was awarded.

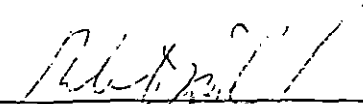
Petitioner also contends that Carrier did not respond to the grievance in a timely manner and it should be allowed on that basis alone.

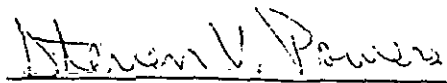
Based on the whole record of this case, this Board is compelled to conclude the Petitioner does not have a legitimate claim. Claimant had an opportunity to bid on the Vehicle Operator's job, but he failed to do so. This Board is not persuaded that Rule 5 applies in this instance or that Carrier responded to the claim in an untimely manner.

AWARD

The claim is denied.


R. E. Dennis, Chairman


R. O'Neill, Carrier Member


S. V. Powers, Employee Member

4-24-90
Date of Adoption