

SPECIAL BOARD OF ADJUSTMENT 1016

Case No. 200

Award No. 200

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 awarded anchor machine positions on Award RD 320-96-1 to junior employees G. H. Gough and M. T. Kirkpatrick instead of Mr. K. E. Turner.

(2) As a consequence of the violation referred to in Part (1) above, Mr. Turner shall be placed on the Class Two Machine Operator roster effective April 1, 1996, in place of Mr. Gough and/or Mr. Kirkpatrick. Additionally, he must be compensated for the difference in rate of pay from April 1 and continuing until such time as the violation is stopped.

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.

In March 1996, Conrail advertised for two Machine Operator Class 2 positions in Rail Gang 320 of the West Regional Production Gangs. These positions operated a Portec Anchor Machine. The Claimant applied for one of these positions on March 23, 1996. At the time of his application, the Claimant held seniority as a Machine Operator Class 3.

Two other Machine Operators Class 3, G. H. Gough and M. T. Kirkpatrick, also applied for the Machine Operator Class 2 positions in Rail Gang 320. Both these employees had more seniority than the Claimant on the Machine Operator Class 3 roster. Moreover, according to their MW-200 cards, they were both qualified to operate the Portec Anchor Machine. On April 6, 1996, the Carrier awarded the Machine Operator Class 3 positions to employees Gough and Kirkpatrick.

On May 30, 1996, the Organization presented a time claim on behalf of the Claimant contending that he should have been awarded a Machine Operator Class 2 position since neither Mr. Gough nor Mr. Kirkpatrick was qualified to operate the Portec Anchor Machine despite what their MW-200 cards indicated.

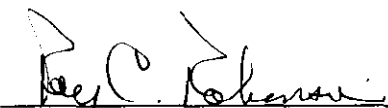
The Carrier denied the time claim contending that both Mr. Gough and Mr. Kirkpatrick demonstrated their ability to operate the Portec Anchor Machine. Consequently, inasmuch as they were the senior qualified applicants they were properly awarded the Machine Operator Class 2 positions, according to the Carrier.

There is no substantial evidence in the record before this Board to support the Organization's assertion that employees Gough and Kirkpatrick had fabricated their MW-2 cards thereby falsely representing that they were qualified to operate the Portec Anchor Machine. According to Conrail, both employees demonstrated their ability to operate the machine. There is no evidence to refute that representation.

It was the Carrier's prerogative to determine whether employees Gough and Kirkpatrick were qualified for the Machine Operator Class 2 positions in Rail Gang 320. That determination was not arbitrary, capricious or unreasonable, in our opinion. Therefore, inasmuch as they were the senior qualified applicants for these positions they were correctly awarded them. The claim must be denied as a result.

AWARD: Claim denied.


Robert M. O'Brien, Neutral Member


Roy C. Robinson, Employee Member


Dennis L. Kerby, Carrier Member

Dated: 4/30/02