

SPECIAL BOARD OF ADJUSTMENT 1016

Case No. 201

Award No. 201

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 employees L. R. Wagers and H. Hess instead of Mr. G. Ingram to fill a Class 2 Machine Operator position at Athens, Ohio from April 7 through April 24, 1997.

(2) As a consequence of the aforesaid violation, Mr. G. Ingram shall be allowed ten (10) hours of pay per day at the Class 2 Machine Operator's straight time rate and compensation for all overtime worked by the junior employees during the claim period.

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 facts that led to this claim are not in dispute. The Claimant was furloughed at the end of the 1996 production season. On April 3, 1997, the Carrier's assignment clerk telephoned the Claimant to offer him a temporary vacancy at Athens, Ohio. The clerk was advised that the Claimant was no longer at that location and he was given another

telephone number where he could be contacted. The assignment clerk telephoned that number and left a message for the Claimant to call him.

The Claimant never returned the assignment clerk's telephone call. The clerk telephoned the Claimant again at 7:30 a.m. on April 4, 1997, but there was no answer. Therefore, the assignment clerk called the next employee in seniority order for the temporary assignment.

On May 12, 1997, the Organization submitted a claim on behalf of the Claimant for the wages earned by the employee junior to him who worked the temporary assignment at Athens, Ohio. It is the Organization's contention that the Carrier was required to recall the Claimant by mail which it never did.

The BMW-Conrail Agreement makes a distinction between furloughed employees who are recalled to service and furloughed employees who are used to fill temporary vacancies that are pending assignment. The former is governed by Rule 4 while the latter is governed by Rule 3 of the Agreement.

Under Rule 4, Section 3, a furloughed employee who is *recalled to service* must be notified of his recall by certified mail at his or her last recorded address. There is no similar requirement in Rule 3, Section 4, for furloughed employees who are used to fill temporary vacancies that are pending assignment. Rather, Rule 3, Section 4, requires Conrail to offer these temporary assignments to the senior qualified available employee. Unlike employees who are recalled to service Rule 3 does not prescribe how furloughed employees are to be notified of temporary assignments.


Since Rule 3, Section 4, does not obligate the Carrier to notify furloughed employees of temporary vacancies by mail it has the right to notify them by telephone, in this Board's opinion. This makes sense inasmuch as time may not permit the Carrier to notify furloughed employees by mail of some temporary vacancies.


Third Division Award No. 29852 is not germane to the instant case, in this Board's opinion, since that decision was based on Rule 4 of the BMW-Conrail Agreement. As noted above, Rule 4, Section 3, expressly requires Conrail to notify furloughed employees of their recall to service by certified mail at the employee's last recorded address.

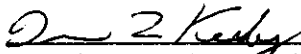
The Carrier made a diligent effort to notify the Claimant of the temporary assignment at Athens, Ohio. The assignment clerk telephoned him on April 3 and April 4, 1997, but he never returned the call. Therefore, the Claimant was not "*available*" for the temporary assignment as required by Rule 3, Section 4, of the BMW-Conrail Agreement. Under these circumstances, the Carrier had the right to offer the temporary assignment to the next senior qualified available furloughed employee. The claim is denied as a result.

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AWARD: Claim denied.


Robert M. O'Brien, Neutral Member


Roy C. Robinson, Employee Member


Dennis L. Kerby, Carrier Member

Dated: 4/30/02