

PROCEEDINGS BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1016

AWARD NO. 44

Case No. 44

Referee Fred Blackwell

Carrier Member: J. H. Burton

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 Agreement was violated when the Carrier abolished the position of Trackman/Casual Driver W. H. Hirsch effective January 9, 1987 without furnishing five (5) working days' advance notice (System Docket CR-3029).

(2) The Agreement was further violated when the Carrier assigned Machine Operator J. Aughenbaugh and Foreman R. L. Lope to fill a trackman/casual driver position operating a boom truck on the Clearfield Sub-division from January 12 through February 20, 1987, instead of assigning Trackman/Casual Driver W. H. Hirsch to fill the position (System Dockets CR-3028 and CR-3030).

(3) As a consequence of the violation referred to in Part (1) above, Mr. W. H. Hirsch shall be allowed thirty-two (32) hours of pay at the trackman/casual driver pro rata rate.

(4) As a consequence of the violation referred to in Part (2), above, Mr. W. H. Hirsch shall be allowed two hundred and eight (208) hours of pay at the trackman/casual driver pro rata rate.

FINDINGS:

Upon the whole record and all the evidence, and after hearing on August 17, 1989, 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.

FRED BLACKWELL
ATTORNEY AT LAW

19129 ROMAN WAY
GAITHERSBURG,
MARYLAND 20879
(301) 977-5000

OPINION

This claim arises on the basis of allegations that the Carrier violated the Agreement rights of Claimant Trackman/Casual Driver W. H. Hirsch by its action of abolishing his position on January 9, 1987 without furnishing five (5) working days advance notice and by the action of assigning a Machine Operator and a Foreman to fill a Trackman/Casual Driver position operating a boom truck in the period January 12 - February 20, 1987, instead of assigning such position to the Claimant.

The position of the Carrier is that the Claimant's position of Trackman/Casual Driver was not abolished as alleged by the Claimant, and instead, the headquarters of the position was transferred from Clearfield to Reynoldsville, Pennsylvania. The Carrier says further that after the transfer of the Trackman/Casual Driver position to Reynoldsville, there were no Trackman's positions remaining at Clearfield; that it was contractually permissible for Machine Operator Aughenbaugh to drive the boom truck located at Clearfield, Pennsylvania for transportation purposes only for a minimal period of time on the claim dates; and that the Carrier was not required by any rule of the Agreement to advertise a Trackman/Casual Driver position at Clearfield to perform this minimal amount of driving for transportation purposes.

* * * * *

After due study of the foregoing, and based on the record as a whole, including the arguments presented by the parties'

submissions in support of their positions in the case, the Board concludes that the record does not show the claims to be meritorious.

More specifically, the record satisfactorily demonstrates that the Claimant's position of Trackman/Casual Driver at Clearfield, Pennsylvania, was not abolished as alleged by the Claimant, but was made subject to a headquarters move from Clearfield to Reynoldsville, Pennsylvania (Carrier Exhibit B); and that the Claimant did not follow the position to Reynoldsville because he was displaced by a senior Employee and subsequently furloughed. In view of these facts, the Board concludes that the record does not establish that the Carrier violated the advanced notice of abolishment provisions in Rule 6 of the parties' Agreement.

The Board notes further that the facts in the record as a whole do not establish that a Trackman/Casual Driver position continued to exist at the Clearfield headquarters after the transfer of the former Trackman/Casual Driver position to Reynoldsville. The record further shows that only minimal driving duty remained to be performed at Clearfield after such transfer, and the record does not persuade that the Carrier had an obligation to advertise a Trackman/Casual Driver position at Clearfield which the Claimant may have been able to occupy by displacement or by bid.

In view of the foregoing, and based on the record as a whole, the claim will be denied.

FRED BLACKWELL
ATTORNEY AT LAW

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GAITHERSBURG,
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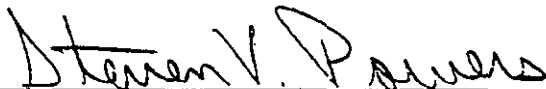
AWARD:

Claim denied.

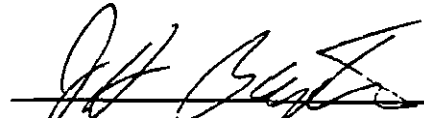
BY ORDER OF SPECIAL BOARD OF ADJUSTMENT NO. 1016



Fred Blackwell, Neutral Member



S. V. Powers, Labor Member



J. H. Burton, Carrier Member

Executed on DEC 28 1990, 1990

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FRED BLACKWELL
ATTORNEY AT LAW

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GAITHERSBURG,
MARYLAND 20879
(301) 977-5000