

PROCEEDINGS BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1016

AWARD NO. 50

Case No. 50

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 Carrier violated the Agreement when it assigned Allegheny "A" zone employee L. L. Claar instead of Allegheny "B" zone employee G. Duke to string line curves on the Allegheny "B" zone beginning March 2, 1987 (System Docket CR-4109).
2. As a consequence of the aforesaid violation, Mr. G. Duke shall be compensated for all hours Mr. L. L. Claar worked string lining curves on the Allegheny "B" zone beginning March 2, 1987 and continuing until the violation was corrected.

FINDINGS:

*Upon the whole record and all the evidence, and after hearing on August 22, 1990, 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.*

DECISION:

Claim Denied.

FRED BLACKWELL  
ATTORNEY AT LAW

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**OPINION**

This case arises from a claim filed on April 11, 1987 by the Claimant, Mr. Gary E. Duke, who alleges that the Carrier violated the Agreement by its action of assigning Allegheny "A" Division Seniority District Employee L. L. Claar, a Machine Operator, instead of Allegheny "B" Division Seniority District Employee, Claimant Duke, to string line curves on various on the Allegheny "B" Division Seniority District. Alleging that the seniority rights of Machine Operator Claar are restricted to the Allegheny "A" Division Seniority District, the Organization requests that the Carrier be required to compensate Claimant Duke for all hours worked by Mr. Claar string lining curves on the Allegheny "B" Division Seniority District.

**I. FACTS**

The submission of the Organization sets out several arguments in support of the claim. However, the record shows that the parties agreed, on May 18, 1988, that the outcome of the claim would depend on a test of the qualifications of Claimant Duke to string line curves. Consequently, the Board deems all arguments in the case abandoned excepting the parties' arguments concerning the said test.<sup>1</sup>

In regard to the subject of the agreed to test of the Claimant, the Carrier submits in an August 15, 1988 letter by the Senior Director-Labor Relations, Mr. G. F. Bent, that

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<sup>1</sup> This finding covers and treats as abandoned the Organization contention that the Claimant possessed sufficient qualifications to string line curves.

the Claimant failed to pass the test for the following reasons (Carrier Exhibit A):

- "1. Failure to denote length of spiral in, and length of spiral out.*
- 2. Failure to denote maximum elevation per M.W. 4 for train operation over each portion of compound curve.*
- 3. Did not designate elevation run-off (rate of change at uniform rate) as required for each spiral.*
- 4. Failure to denote Timetable speed for track data taken on."*

The letter also states that copies of the stringlining notes taken by both Claimant Duke and Mr. Claar are attached to the letter.

The Organization submits that the Carrier failed to show that the Claimant did not successfully pass the June 1, 1988 test of his qualifications to string line curves.

Specifically, the Organization asserts that the information omitted from the Claimant's answer sheet, which the Carrier cited as the reasons why the Claimant failed the test, was not shown by Carrier evidence to have been requested or required of Claimant Duke. The Organization also asserts that what is required of an Employee performing the work of stringlining curves, on a daily basis, is far less than that shown on the Claimant's test sheet.

## **II. FINDINGS AND DISCUSSION**

After due assessment and study of the foregoing and of the whole record, the Board finds that the Carrier's determination that Claimant Duke failed the agreed to test, is supported by substantial evidence of record and is not rebutted by any evidence or argument offered by the Organization.

The Carrier's determination was based on a June 1, 1988 opportunity for Claimant Duke to demonstrate his qualifications to string line curves. The demonstration/test was conducted in the presence of Carrier and BMW Officials. The evaluation of the test results by two (2) Carrier Officials was that Claimant Duke failed the test due to his omission of four (4) categories of pertinent information.

The Organization contention that the Carrier did not present evidence showing that the Carrier requested or required the Claimant to provide the omitted information, has no tendency to weaken or rebut the Carrier's findings that Claimant Duke failed the test of his qualifications to string line curves. The Carrier's determination regarding the Claimant's non-qualifications for the duty of stringlining curves is supported by adequate evidence of record and therefore, the claim will be denied.

In view of the foregoing and based on the whole record, the Board finds that the claim is not shown by the record to be meritorious and the claim will therefore be denied.

**AWARD:**

The claim is not shown to be valid by the record as a whole.

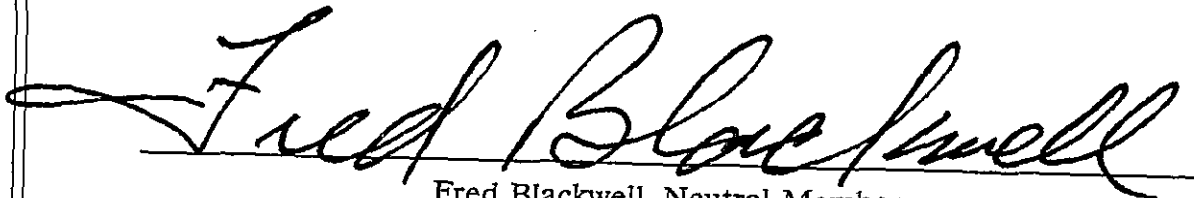
Accordingly, the claim is hereby denied.


BY ORDER OF SPECIAL BOARD OF ADJUSTMENT NO. 1016

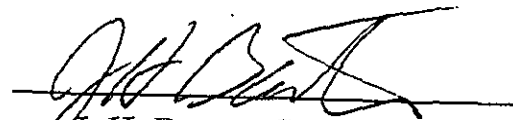
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SBA No. 1016 / Award No. 50 - Case No. 50

  
Fred Blackwell, Neutral Member

  
S. V. Powers, Labor Member

  
J. H. Burton, Carrier Member

Executed on 1/5/, 1992<sup>3</sup>

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