

PROCEEDINGS BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1016

AWARD NO. 52

Case No. 52

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 recalled and assigned junior furloughed Allegheny "B" Seniority District trackmen instead of Trackman C. D. Murphy to fill temporary trackmen vacancies on the Philadelphia Division beginning during July 1986 (System Docket CR-2825).

(2) As a consequence of the aforesaid violation, Mr. C. D. Murphy shall:

"...immediately be placed on one of the positions in the Philadelphia Seniority District filled by an employee who, although junior in Allegheny 'B' Trackman rights, was allowed to fill such positions commencing in July 1986. Further, the Organization requests that the claimant receive eight (8) hours at the pro-rata Trackman rate for every work day after mid-July 1986 that the claimant was illegally prevented from filling this position."

**FINDINGS:**

*Upon the whole record and all the evidence, and after hearing on September 6, 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.*

FRED BLACKWELL  
ATTORNEY AT LAW

P.O. BOX 6095  
WEST COLUMBIA,  
S.C. 29171  
(803) 791-8086

DECISION:

Claim Sustained.

OPINION

In July 1986, there was a temporary need for Trackmen on the Philadelphia Division. All Trackmen on the Philadelphia Division were employed, so the Carrier decided to offer the temporary jobs to furloughed Trackmen on other seniority districts. The Claimant was among the furloughees on the Allegheny "B" roster considered for the jobs, but he was not among the Employees selected to fill the temporary jobs.

The Organization filed an August 4, 1986 claim, alleging that the Carrier had violated the Claimant's seniority rights under Rule 4 of the Schedule Agreement.

By letter dated September 19, 1986, the Carrier's Division Engineer, Philadelphia Division, denied the claim for the following reason:

*"After reviewing Mr. Murphy's personnel file, I felt it was in the best interest of the Philadelphia Division not to allow Mr. Murphy to be employed on the Philadelphia Division."*

Rule 4, in pertinent part, reads as follows:

*"Section 4. Filling temporary vacancies.*

*(a) A position or vacancy may be filled temporarily pending assignment. When new positions or vacancies occur, the senior qualified available employees will be given preference, whether working in a lower rated position or in the same grade or class pending advertisement and award.*

*When furloughed employees are to be used to fill positions under this Section, the senior qualified furloughed employees in the seniority district shall be offered the opportunity to return to service. Such employees who return and*

*are not awarded a position or assigned to another vacancy shall return to furlough status.*

\* \* \*

*(e) The word 'senior' as used in paragraph (a) of this Section means, first, senior in the class in which the assignment is to be made and, thereafter, in the lower classes, respectively, in the same group in the order in which the classes appear on the seniority roster. The word 'senior' as used in paragraph (b) of this Section means either senior in the class in which the assignment has been made or senior in the highest class in the same group in which the employee assigned holds seniority.*

*(f) Vacancies which are not advertised may be filled in like manner."*

The Organization submits that the Carrier has not denied the Organization's assertions that Employees from the Allegheny "B" Seniority District were assigned to the temporary Trackmen jobs on the Philadelphia Division in July 1986. The Organization further submits that Third Division Award 26944 (03-30-88) is precedential authority on the Conrail property that requires Conrail to follow seniority in a class of Employees when the Carrier chooses Employees from that class to fill job vacancies in seniority districts other than the seniority district of said class.

The Carrier submits that it was not required to offer the temporary jobs on the Philadelphia Division to the furlougees of Allegheny "B" Seniority District, and that the Carrier was not required to follow seniority in selecting furlougees for assignments to such temporary jobs. The Carrier submits further that the Organization has not named an individual to whom work was offered who is junior to the Claimant on the roster of the Allegheny "B" Seniority District.

\* \* \* \* \*

FRED BLACKWELL  
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After due study and assessment of the foregoing, and of the whole record including the submissions presented by the parties in support of their positions in the case, the Board concludes that the claim is supported by the record and that a sustaining award is in order.

The dispute in Third Division Award No. 26944 (03-30-88), between these same parties, concerned a seniority question that arose under Rules 3 and 4 of the Conrail-BMWE Schedule Agreement. In resolving that dispute, the Board ruled that when the Carrier goes to rosters outside a seniority district to fill vacancies, the Employees on the seniority roster of the outside district are entitled to compete against one another for the job vacancy on the basis of seniority. Third Division Award No. 26944 is in point with the facts and issue in this case and the Award will therefore be given controlling precedential weight in the determination of the construction of Rule 4 in the facts of this case.

It is therefore found that the Carrier should have assigned the herein Claimant to a temporary job on the Philadelphia Division ahead of Employees who were junior to the Claimant on the seniority roster of the Allegheny "B" Seniority District. It is further found that a sustaining award on this basis is in order.

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

**AWARD:**

The Carrier was required under Rule 4 of the Conrail-BMWE Agreement to assign the Claimant to a temporary job on the Philadelphia Division ahead of

FRED BLACKWELL  
ATTORNEY AT LAW

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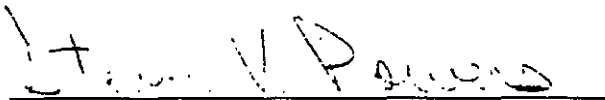
Employees junior to Claimant on the Seniority Roster of the Allegheny "B" Seniority District.

Accordingly, the claim is sustained to the extent that the Carrier is directed to compensate the Claimant for an amount equivalent to the earnings of any Employee assigned to one of the temporary jobs on the Philadelphia Division who was junior to the Claimant on the Seniority Roster of the Allegheny "B" Seniority District.

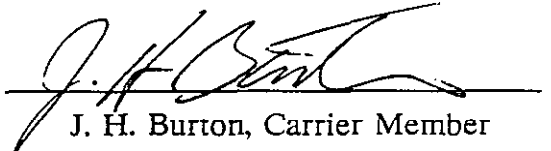
BY ORDER OF SPECIAL BOARD OF ADJUSTMENT NO. 1016



Fred Blackwell, Neutral Member



S. V. Powers, Labor Member



J. H. Burton, Carrier Member

Executed on 1/18, 1993

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FRED BLACKWELL  
ATTORNEY AT LAW

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WEST COLUMBIA,  
S.C. 29171  
(803) 791-8086