

PROCEEDINGS BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1016

AWARD NO. 57

Case No. 57

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, effective May 4, 1987, it assigned junior employe J. Hockenberry instead of Mr. J. R. Hummel to the Class 1 Machine Operator position (Gradall) advertised on Bulletin No. 42-87 (System Docket CR-3161).

(2) As a consequence of the aforesaid violation, Mr. J. R. Hummel shall be allowed:

"...Class 1 Machine Operator Roster Date of May 4, 1987. To be placed in front of Mr. Hockenberry on this roster (being senior to him). The difference in the pay rate, \$.40 per hour, eight hours per day, starting on May 4, 1987 and continuing as per Rule 26 (f) or in common words \$.40 per hour, all the straight time hours Mr. Hockenberry works as a Class 1 Machine Operator. Also, all the overtime Mr. Hockenberry earns***."

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.

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DECISION:

Claim Denied.

OPINION

This is a seniority-qualification dispute in which the Claimant, Mr. J. R. Hummel, alleges that although he was the senior applicant for a bulletin vacancy in the position of Gradall Machine Operator assigned to the Port Newark Rehabilitation Gang, the Carrier improperly declared him not qualified to perform the duties of the position.

The requested remedy is for an award that provides appropriate compensation to the Claimant and that gives him seniority on the Class 1 Machine Operator Roster.

The Carrier submits that the claim should be denied for lack of merit.

* * * * *

The record reflects that at one time the Claimant operated the Gradall machine for the SE-142 Gang for a short time, but had never qualified as an Operator on the machine, and that he was senior to the Employee who was awarded the disputed vacancy as Operator of the Gradall Machine. The record reflects further that the Claimant did not exercise his rights under Rule 3, Section 2 to make a written request to be allowed to give a reasonable, practical demonstration of his qualifications to perform the duties of the position of Operation of the Gradall Machine.

In assessing the foregoing, and the whole record including the submissions presented by the parties in support of their positions in the case, the Board concludes

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and finds that the Carrier was not arbitrary or discriminatory in making the determination that the Claimant was not qualified to perform the duties of the Operator of the Gradall Machine. See the disposition of a similar dispute between these same parties in Award No. 2, Public Law Board No. 3781 (02-12-86).

In view of the foregoing, and based on the record as a whole, it is found that the claim lacks merit and that a denial award is in order.

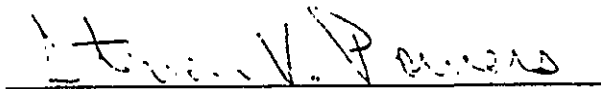
AWARD:

The claim is not supported by the record and accordingly, the claim is hereby denied.

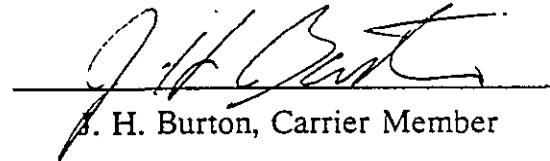
BY ORDER OF SPECIAL BOARD OF ADJUSTMENT NO. 1016



Fred Blackwell, Neutral Member



S. V. Powers, Labor Member



J. H. Burton, Carrier Member

Executed on 1/18, 1993

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