

PROCEEDINGS BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1016

AWARD NO. 36

Case No. 36

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 failed and refused to allow Mr. M. L. Robinson to displace Track Foreman T. L. Brown effective June 24, 1986 (System Docket CR-2889).
- (2) As a consequence of the violation referred to in Part (1) above, Mr. M. L. Robinson shall be allowed compensation and credits for all time worked by Mr. T. L. Brown beginning June 24, 1986 and continuing until such time as the violation is corrected.

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.

OPINION

This case involves the claim of Track Foreman M. L. Robinson who alleges that the Carrier violated the Agreement by denying his attempt to displace junior Track Foreman, T. L. Brown, from the Foreman position of Ballast Gang 301 at Fort Wayne, In-

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diana on June 24, 1986. The requested remedy is that Claimant Robinson be allowed compensation for time lost due to the violation.

The Organization asserts that the claim is valid under the Seniority and Displacement Rules (Rules 3 and 4) of the Agreement; and that the claim is not barred by the time limit provisions in Rule 26(b).

The Carrier submits that the claim is barred by an untimely appeal under Rule 26(b); that the Claimant was not mishandled under the Displacement Rules in that the situation resulting in his failure to displace Mr. Brown on June 24, resulting from a situation of his own making; and that the claim should be denied on these grounds.

The fact basis of the time limit objection is that the initial claim was denied by Carrier letter dated October 15, 1986, and that the appeal of that denial, mailed on December 15, 1986, was beyond the sixty (60) day period allowed for appeals by Rule 26(b). A U. S. Mail postmark on the December 15 appeal is shown by the record evidence; however, nothing of record, such as a Certified Mail receipt, shows when the October 15, 1986 denial letter was mailed. Rule 26(e) provides that when U. S. Mail is used, the postmark will govern in determining compliance with time limits. In this case the Organization's appeal of the Carrier's denial of the claim was required under Rule 26(a) to be made "within sixty (60) days after it was denied." But, as noted, since the record

is barren of U. S. Mail postmark information to show when the Carrier's denial was mailed, there is no established date from which to start counting the sixty (60) days within which the appeal must be made. Accordingly, in view of this uncertainty as to the mailing of the Carrier's denial letter, the Board is not persuaded that a time limit bar is established by the record evidence and hence, the merits of the claim must be considered.

In regard to the merits of the claim, the record reflects that the Claimant, Track Foreman Robinson, was displaced from his regular assignment at Winona Lake on June 16, 1986, which, under Rule 4, required him to exercise his seniority within ten (10) days from that date. On June 24, the Claimant reported to Assistant Supervisor of Production, Mr. P. R. Johnson, at Fort Wayne, Indiana, and attempted to exercise his seniority to displace a junior employee, Track Foreman T. L. Brown, from his position as Foreman of Ballast Gang 301. The Supervisor, after contacting Assistant Production Engineer J. Houser, informed the Claimant that his request was denied because Mr. Brown was performing service in a temporary position as the Track Foreman with the Jimbo Tie Crane; and that he, Claimant, would have to displace Track Foreman Brown from his bid position as Foreman of Ballast Gang 301 at Porter, Indiana.

The Claimant reported to Porter on June 25, but Gang 301 was not there. He was told by the office of the Division Engineer that Ballast Gang 301 had relocated to Colehour Yard, Whiting, In-

diana; on June 26, he travelled to Colehour Yard, but the Gang was not there or in that area.

After seeking assistance from a Union Official, who contacted the Division Engineer on the Claimant's behalf, the Claimant was directed to report for duty at Fort Wayne on July 2, 1986, where he was assigned to fill the temporary Foreman position on the Jimbo Tie Crane which he had been refused on June 24.

The temporary position was discontinued at the close of the same shift on July 2. On July 3, the Claimant reported to South Bend, Indiana, to attempt to place himself as Foreman on Ballast Gang 301 due to his having been furloughed when the Carrier abolished the temporary assignment at the close of the shift on July 2. This attempt to displace Track Foreman Brown was refused by the Carrier on the ground that the Claimant had "failed to exercise his seniority to an available permanent position with the specified time as provided by Rule 4." (Carrier Exhibit E, Carrier Letter dated February 16, 1987)

After due study of the foregoing and of the record as a whole, inclusive of the submissions presented by the parties in support of their respective positions in the case, the Board finds that the record shows the claim to be meritorious and that a sustaining award is in order.

Under Rule 3, Section 4. (b), the Claimant, Track Foreman Robinson, was entitled to displace Track Foreman Brown from the temporary position of Foreman with the Jimbo Tie Crane at Fort

Wayne, Indiana on June 24, 1986; and the Carrier's action of denying such displacement right was violative of the rule.

It is inescapable from study of the rules and facts of the case that the Carrier should have permitted the Claimant's requested displacement on June 24, 1986 to the temporary position of Track Foreman with the Jimbo Tie Crane, and should not have sent the Claimant to Porter, Indiana, in order to place himself on Track Foreman Brown's bid position as Foreman of Ballast Gang 301. Had the Carrier allowed the Claimant to make the displacement on June 24 to which he was entitled under the rules, the Claimant would not have become involved in travelling to other points attempting to locate Ballast Gang 301, and there would not have been any question about his having exercised seniority within ten (10) days after his displacement of June 16, 1986 as required by Rule 4.

In sum, but for the Carrier's violation of the Agreement by its mishandling of the Claimant's displacement right and attempt to exercise same on June 24, 1986 at Fort Wayne, Indiana, the Claimant would have been at work and under pay from that date forward and hence, the Claimant is entitled to be compensated for time lost due to that violation. The claim will therefore be sustained and compensation allowed on that basis.

AWARD:

The Carrier's administration of the Claimant's displacement's rights at Fort Wayne, Indiana on June 24, 1986,

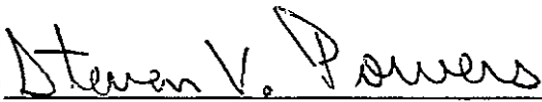
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was violative of the Agreement; and the Carrier is required to compensate the Claimant for all time lost due to such violation.

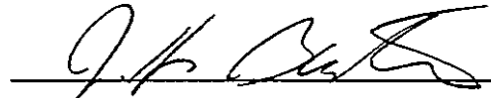
BY ORDER OF SPECIAL BOARD OF ADJUSTMENT NO. 1016



Fred Blackwell, Neutral Member



S. V. Powers, Labor Member



J. H. Burton, Carrier Member

Executed on JUN 20 1990, 1990

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