

PROCEEDINGS BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1016

AWARD NO. 45

Case No. 45

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 B&B Mechanic R. Pardo to displace junior B&B Mechanic D. Uram in the Diesel Shop at Oak Island, Newark, New Jersey, effective January 5, 1987 (System Docket CR-3052).

(2) As a consequence of the aforesaid violation, B&B Mechanic R. Pardo shall be allowed:

"...payment of eight hours each day Mr. Uram works, at the B&B Mechanic rate plus all the overtime Mr. Uram earns on this job, while Mr. Pardo is not allowed to displace it. This will be confirmed through a mutual inspection of Mr. Uram's pay records between a rep. of Conrail and a rep. of the Penn Federation."

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 is a disqualification dispute in which the Claimant,

B&B Mechanic R. Pardo, was denied his attempt to displace a junior B&B Mechanic from a position at the Carrier's Diesel Terminal at Oak Island, Newark, New Jersey, on the grounds that he lacked qualification to perform the assigned duty of the position of operating and maintaining pollution abatement equipment.

The Carrier submits that its actions regarding the Claimant are not improper, because except for the duty of maintaining the Pollution Abatement Facility, all duties of the position advertised by the bulletin had always been assigned to the position; that special training was given to the present incumbent of the position because he lacked abatement pollution equipment qualifications when he bid in the position; and that the Claimant has made no evidentiary showing that he is qualified for the position.

* * * * *

After due study of the record as a whole, including the arguments presented by the parties' submissions in support of their positions in the case, it is concluded that the claim is not shown to be meritorious and that it must be denied for lack of the requisite evidentiary support.

The record does not establish the Claimant's qualifications to perform the duties of operating and maintaining the pollution abatement equipment, which is part of the regularly assigned duties of the position in dispute, and consequently, there is no basis on which this Board could direct the Carrier to place the Claimant in the position. The Board observes that in a practical

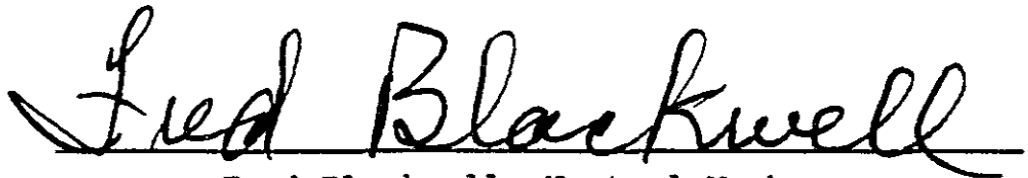
sense, the Organization's argument that the fact that the present incumbent received training to operate the pollution equipment gives him a form of super seniority, seems plausible and logical; however, the fact that such super seniority may result from circumstances such as those involved in this case is not addressed by the rule, and it is beyond the province of this Board to rewrite the rule to provide a new procedure which the parties themselves can provide if they chose to do so.

In view of the foregoing, and based on the record as a whole, the claim will be denied for lack of the requisite evidentiary support.

AWARD:

Claim denied.

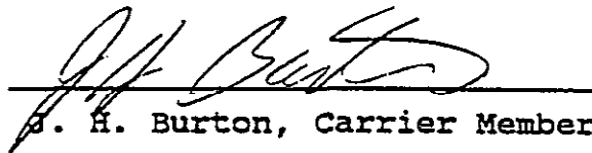
BY ORDER OF SPECIAL BOARD OF ADJUSTMENT NO. 1016



Fred Blackwell, Neutral Member



S. V. Powers, Labor Member



G. H. Burton, Carrier Member

Executed on DEC 28 1990, 1990

FRED BLACKWELL
ATTORNEY AT LAW

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

Conrail\1016\45-45.N09