

PROCEEDINGS BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1016

AWARD NO. 5

Case No. 5

Referee Fred Blackwell

Carrier Member: R. O'Neill

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 used Class 2 Machine Operators W. Koeppen, L. Diehl, L. Chicchi and S. Wenzel to perform trackman's work on the Hazelton-White Haven and Bethlehem Sub-divisions beginning on December 3, 1984 and on a continuing daily basis thereafter (System Dockets CR-1408, CR-1409, CR-1410 and CR-1411).

(2) Because of the aforesaid violation, furloughed Trackman R. Gale, A. Breymeier, T. Bauer and G. Buchman shall be compensated at the trackman's rate of pay for all time worked by Messrs. Koeppen, Diehl, Chicchi and Wenzel, respectively, beginning December 3, 1984 and continuing until the violation was corrected.

FINDINGS:

Upon the whole record and all the evidence, and after hearing on December 5, 1988, 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 arises from claims by four (4) Trackmen who

allege that following their being placed in furlough status as a result of a December 3, 1984 reduction in forces on Tie Gang TK-144, the Carrier permitted Trackman's work to be performed by four (4) Employees who were assigned to Class 2 Machine Operator's positions on the same gang, and who had less seniority in the Trackman's classification than the Claimants.

The target Employees of the claims who held Class 2 Machine Operator positions on Tie Gang TK-144 at and after the time the four Claimant Trackmen were placed on furlough are Messrs. Koeppen, Diehl, Chicchi, and Wenzel.

From study of the record as a whole, the Board is satisfied that two (2) of the target Employees, Messrs. Koeppen and Diehl, were not assigned to Trackman's work in the claim period. Mr. Koeppen, along with the Claimants, was furloughed on December 3, 1984; he was recalled on April 1, 1985. Mr. Diehl exercised seniority to Gang TB-149 at Croxton, New Jersey on December 11, 1984 (See Carrier Exhibit F, June 26, 1985 letter of Carrier's highest appeals official). Accordingly, the claims that target Trackman's work allegedly performed on Tie Gang TK-144 by Mr. Koeppen and Mr. Diehl in the claim period, will be denied for lack of adequate evidentiary support.

The remaining claims involving the two other target Employees, Messrs. Chicchi and Wenzel, stand on a different footing, however; for the record satisfactorily shows that Mr. Chicchi and Mr. Wenzel performed Trackman's work on Tie Gang TK-144 during the

claim period (See Attachments 1 and 2, Employee Exhibit A-7).¹ Accordingly, the claims that target Trackman's work performed by Mr. Chicchi and Mr. Wenzel on Tie Gang TK-144 in the claim period, are found meritorious and will be sustained.

In view of the foregoing, and based on the record as a whole, the claims that target Trackman's work on Tie Gang TK-144 performed by Mr. Koeppen and Mr. Diehl, will be denied; the claims that target Trackman's work performed on Tie Gang TK-144 during the claim period by Mr. Chicchi and Mr. Wenzel, are found meritorious and will be sustained.

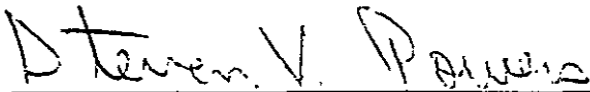
AWARD

Claims involving Mr. Koeppen and Mr. Diehl are denied, as per the Opinion. Claims involving Mr. Chicchi and Mr. Wenzel, are sustained as per the Opinion.

BY ORDER OF SPECIAL BOARD OF ADJUSTMENT NO. 1016



Fred Blackwell, Neutral Member



S. V. Powers, Labor Member

Executed on December 5, 1989
Conrail\1016\5-5.N13



R. O'Neill, Carrier Member

Dissent - Exhibit A-7 should have been excluded from Board consideration.

¹ The Board finds unpersuasive the Carrier's objection that Employee Exhibit A-7 should be excluded from Board consideration due to not having been part of the handling on the property.