

SPECIAL BOARD OF ADJUSTMENT NO. 1048

AWARD NO. 116

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

NORFOLK SOUTHERN RAILWAY COMPANY

(Carrier File MW-BLUE-04-42-LM-560)

Statement of Claim:

Claim on behalf of W. G. Musick for 128 hours at the straight time rate account allegedly not permitted to displace on October 26, 2000.

Upon the whole record and all the evidence, after hearing, the Board finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and this Board is duly constituted by agreement under Public Law 89-456 and has jurisdiction of the parties and subject matter.

AWARD

After thoroughly reviewing and considering the transcript and the parties' presentation, the Board finds that the claim should be disposed of as follows:

BACKGROUND

On October 20, 2000¹, the W. G. Musick, the Claimant herein, was released from his position as a machine operator on Gang TS-20 due to a reduction in force. On October 26th, the Claimant traveled to Grundy, Virginia, located approximately 40 miles from his residence, where he spoke to Track Supervisor Church. The Claimant informed Mr. Church that he wanted to displace D. C. Wolford, who the Claimant believed was assigned to a machine operator position on the backhoe,

¹ All dates herein occurred in calendar year 2000 unless otherwise noted.

and who was junior in seniority to the Claimant. Supervisor Church denied the Claimant's request, noting that no junior employee was working on this section force. The Claimant then requested that Supervisor Church advise him of any openings. The Claimant then left the scene.

Upon investigation, the Organization discovered that Mr. Wolford remained in his position until he was displaced on November 16th. As a result, the Organization requests that the Claimant be paid 128 hours at the applicable straight time rate as that of a Machine Operator. In denying this request, the Carrier notes that "Mr. Musick did not make an attempt to displace Mr. Wolford as a laborer. His attempt was to displace him off the backhoe", which position the Carrier maintains was abolished as of October 20, 2000. The Carrier notes however that Mr. Wolford claimed a temporary laborer vacancy on October 23rd, and held this position until he was furloughed on November 16th.

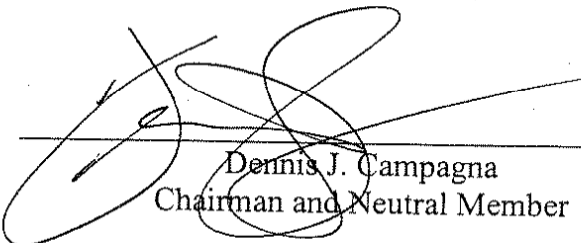
DISCUSSION

Following a careful review of the record evidence, the Board finds in the Organization's favor. In reaching this conclusion, and assuming that the backhoe position was indeed abolished as of October 20th, it is clear that the Claimant, who traveled to Grundy, Virginia in search for work, informed Supervisor Church that he was prepared to exercise his seniority rights in displacing any employee less senior than him, whether in the backhoe or laborer position. The record evidence reflects that while the Claimant was more senior than Mr. Wolford and accordingly, eligible to kick him from the laborer's position, he was not given the opportunity to do so.

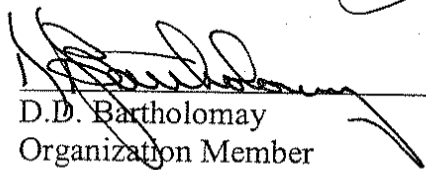
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CONCLUSION

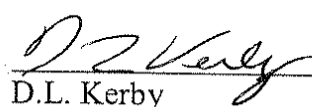
The claim is sustained. The Claimant shall be paid at the Laborer's straight time rate for the 128 hours requested.



Dennis J. Campagna
Chairman and Neutral Member



D.D. Bartholomay
Organization Member



D.L. Kerby
Carrier Member

July 24, 2006
Dated