AWARD NO. 24
ITE NO. 158

SPECIAL BOARD OF ADJUSTMENT NO. 541

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

ERIE LACKAWANNA RAILWAY COMPANY

STATEMENT OF CLAIM:

1. The Carrier violated the effective Agreement when on September 30, 1963, it failed to recall to service Mr. C. I. Bryan, Olean, N. Y., and Mr. Paul Gee, Olean, N. Y., when forces were increased on Section No. 7 at Randolph, N.Y.

2. Claimant Bryan and Gee be now reimbursed for the loss of wages suffered by them due to the Carrier's violation of this Agreement, commencing September 30, 1963 and continuing.

FINDINGS: Claimants are trackmen whose positions on an extra gang at Olean, New York, were discontinued. They elected furlough rather than exercise displacement rights over junior employes who were working at locations from 34 to 108 miles distant from Olean where Claimants reside. The Claim is that Carrier breached the controlling Agreement by using junior employes and not recalling Claimants when it later increased its force of trackmen on Section 7 at Randolph, New York.

Carrier's initial position was expressed by its Division Engineer who pointed out in his letter of January 10, 1964, to the Local Chairman that both Claimants "failed to exercise their seniority when they were furloughed. As no request was received from either man, it was necessary to use junior employees. In view of these men not exercising their seniority your claim is hereby denied." It is quite apparent from an examination of the applicable Agreement that Carrier's theory is untenable. Rule 5 deals specifically with employes who, like Claimants, do not seek to displace junior employes within ten days after being notified that they will be affected by a force reduction. That Rule provides, in paragraph (a), that they will be considered laid-off employes governed by paragraph (d). Rule 5 (d) stipulates that "Employes laid off who desire to retain their seniority rights to be recalled to service must file in writing within ten (10) days with their foreman and immediate supervising officer (copy to the local Chairman) their names and addresses, also renew same upon each change of address." Rule 5(c) prescribes that when forces are increased or when vacancies occur, employes laid off will be recalled to service in accordance with their seniority subject to subparagraph (d). Nowhere does Rule 5 require or suggest that an employe loses the right to subsequent recall if he fails to exercise displacement rights at the time of layoff.

Claimants fully complied with the terms and conditions of Rule 5 and manifestly were entitled to recall. It was for them alone, and certainly not for any representative of management, to determine whether they desired recall to Randolph. Carrier had no right to assume that they would reject recall to Randolph because it is 39 miles from Olean or for any other reason. Under Rule 5, Claimants were entitled to make the determination.

At a subsequent stage, after the claim had been denied by the Division Engineer and appealed, a new defense was presented alleging that no increase in trackmen was made at Randolph since the employes in Section 7 had merely been transferred from Corry. This contention is inconsistent and difficult to reconcile with the Division Engineer's statement that based denial of the claim on Claimants' failure to exercise displacement rights when furloughed. The record, moreover, does not establish to our satisfaction that the complete section was transferred from Corry to Randolph.

Rule 5 is controlling in the present case. Under its terms, the claim must be sustained.

AWARD: Claim sustained.

Dated at New York, N.Y. this 29th day of October 1968.

/s/Harold M. Weston
HAROLD M. WESTON, NEUTRAL

/s/A. J. Cunningham
ORGANIZATION MEMBER

/s/R. ... Carroll
CARRIER MEMBER