

PUBLIC LAW BOARD NO. 3337

AWARD NO. 1

CASE NO. 1

PARTIES TO DISPUTE:

Consolidated Rail Corporation

and

Railroad Yardmasters of America

STATEMENT OF CLAIM

"Yardmaster F. Loupe, Jr. be restored as a yardmaster with all rights unimpaired and that he be paid for all time lost pursuant to Rule 6-A-2(d) of the governing agreement between the parties."

OPINION OF BOARD

The claimant exercised seniority to displace the incumbent on the first shift yardmaster position at Clearfield, Pennsylvania. He was not qualified on the position and thus was permitted to qualify in accordance with Rule 4-F-1(b):

"(b) If a regular yard master is required to qualify account of having been displaced, or if it is necessary for him to qualify over territory added to his district, he will be compensated at the rate of position last worked, for a period of time to be determined by the proper officer."

The claimant was notified on March 9, 1982 that he was not qualified from working the first shift position at Clearfield. On March 31, 1982 the claimant was sent a letter which rescinded the March 9 letter and instructed him that he had not qualified in thirty (30) working days and he would no longer be paid to "post on the position" and that he could either exercise his seniority or continue to post at his own expense. The claimant was paid for the additional period of time.

The Organization points out that initially the Carrier attempted to disqualify the claimant and they failed to follow the requirements of Rule 6-A-1(b) by failing to give a hearing. Further, the attempt to "correct" the "mistake" on March 31, 1982 did not cure the Carrier's error.

The Carrier denies that the cited rule is applicable and states that it only deals with disqualification of working a yardmaster who is qualified at one point. Thus, because this claimant was a qualified working yardmaster it does not apply here.

The Board is of the view that this individual does have certain hearing rights because, in fact, he was a qualified yardmaster and this dispute arose when he exercised his seniority to another position and the Company's action had the effect of disqualifying him. Further, the "posting" rule does not actually speak to this particular problem of whether or not a hearing is involved.

We do not necessarily interpret the Agreement as requiring a disqualification hearing in each and every instance, however, under the facts of this case we feel that the Employee was entitled to a disqualification hearing and accordingly we will sustain the claim until such time as he may be properly disqualified, after a contractually required hearing.

FINDINGS

The Board, upon consideration of the entire record and all of the evidence finds:

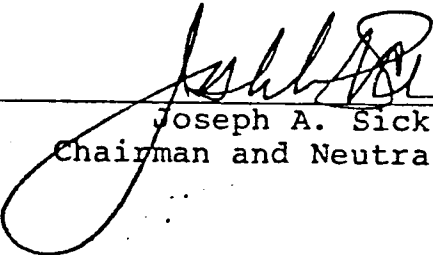
The parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended.

This Board has jurisdiction over the dispute involved herein.

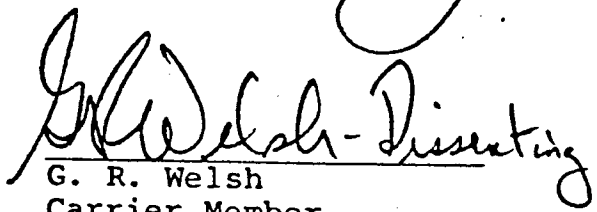
The parties to said dispute were given due and proper notice of hearing thereon.

AWARD


1. Claim sustained.
2. Carrier shall comply with this Award within thirty (30) days of the effective date hereof.



Joseph A. Sickles
Chairman and Neutral Member



G. R. Welsh
Carrier Member



J. C. Thomas
Organization Member

10/5/83

DATE

PUBLIC LAW BOARD No. 3337

AWARD NO. 1

CASE NO. 1

INTERPRETATION NO. 1

PARTIES TO DISPUTE:

Consolidated Rail Corporation

and

Railroad Yardmasters of America

STATEMENT OF CLAIM

"Yardmaster F. Loupe, Jr. be restored as a yardmaster with all rights unimpaired and that he be paid for all time lost pursuant to Rule 6-A-2(d) of the governing agreement between the parties."

INTERPRETATION

On October 5, 1983, this Board issued its Award in Case No. 1. We sustained the Claim, but in the final paragraph of our Opinion, we stated "...accordingly, we will sustain the Claim until such time as he may be properly disqualified, after a contractually required hearing."

On November 2, 1983, the Carrier advised the Claimant that arrangements had been made to allow him to qualify for a first trick Yardmaster position at Clearfield, Pennsylvania, and the Claimant was advised that he would be allowed twenty (20) working days to qualify on said position; and, if successful, he would be permitted to exercise seniority to an available position. If he did not qualify, he would be given a hearing under the provisions of Rule 6-A-1.

On November 25, 1983, the Claimant attempted to exercise seniority to displace an individual on the third trick at Altoona, Pennsylvania. However, the Carrier refused him

permission to do so because it felt that Award No. 1 required the Employee to qualify at Clearfield, Pennsylvania as an initial step.

The Organization also takes issue with the fact that the Carrier has limited financial considerations to a twenty (20) working day period to qualify at Clearfield, rather than reimbursing the Employee for the entire period of time that his claim was being processed.

There is nothing contained in Award No. 1 which is intended to preclude this Employee from exercising any of his contractual rights under the Agreement between the parties. Thus, if he is qualified and senior enough to exercise rights to a position in Altoona, Pennsylvania -- and apparently he is -- he should be permitted to do so rather than attempting to qualify for a position in Clearfield, Pennsylvania. Further, the Board is advised that the Claimant is no longer senior enough to hold the position in Clearfield.

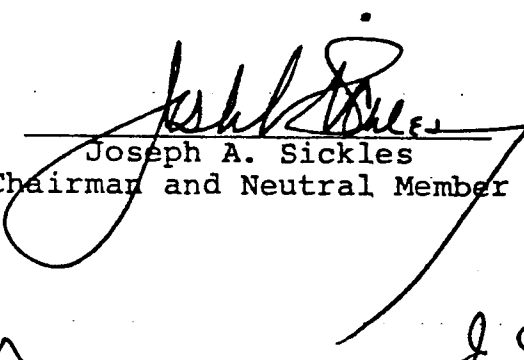
Accordingly, we are of the view that the Claimant should be permitted to exercise his rights at Altoona in accordance with his attempt to do so dated November 25, 1983.

We have considered at length the question of backpay under Rule 6-A-2(d) of the Agreement. While clearly that Rule requires a payment to an Employee, it is only a payment for "time lost". The Carrier notes that the Employee received certain pay guarantees during the period of time and states that he is not entitled to anything further, because there is no indication of record that he has lost anything by the Carrier's action. Of course, it can be argued that the Carrier placed him in the adverse position by disqualifying him without a hearing. In any event, the Board would be required to enter into considerable speculation in order to arrive at an appropriate solution.


It is our considered view that the Employee is not at this time entitled to any additional pay beyond that which he has received during the period of time. However, should he -- in the future -- desire to exercise seniority to a position in Clearfield, Pennsylvania, the prior disqualification shall have been expunged from his record, and he shall be permitted to exercise seniority and qualify in accordance with the provisions of the Agreement.

It should be noted that the Organization Member's signature on this interpretation does not imply concurrence with the failure to award any additional backpay.

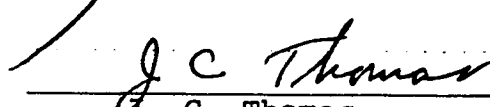
This Interpretation is issued this 20th day of ~~December~~, 1984
MARCH



Joseph A. Sickles
Chairman and Neutral Member



G. R. Welsh
Carrier Member



G. C. Thomas
Organization Member

PUBLIC LAW BOARD NO. 3337

AWARD NO. 1

CASE NO. 1

INTERPRETATION NO. 2

PARTIES TO DISPUTE:

Consolidated Rail Corporation

and

Railroad Yardmasters of America

STATEMENT OF CLAIM

"Yardmaster F. Loupe, Jr. be restored as a yardmaster with all rights unimpaired and that he be paid for all time lost pursuant to Rule 6-A-2(d) of the governing Agreement between the parties."

INTERPRETATION

On October 5, 1983, this Board issued its Award in Case No. 1, sustaining the claim. On November 30, 1983, the Board met to consider the status of the case and ultimately issued Interpretation No. 1.

Subsequent to the Board's meeting of November 30, 1983, events transpired which required the parties to return to the Board to seek an additional Interpretation.

The Board met on March 20, 1984 to once again consider the status of the Case, and we hereby issue our Interpretation No. 2 to this dispute.

Although we stated in Interpretation No. 1 that the Claimant should be permitted to exercise his rights at Altoona, in accordance with his attempt to do so, dated November 25, 1983, Carrier officials at the local level did not permit him to do so on the ground that he was no longer the senior applicant when the Carrier officials received notification of our ruling. It is our view that the inaction on the part of the local officials of the Carrier did not comply with the instructions of this Board as contained in Interpretation No. 1 and verbally conveyed to the parties prior to the date that the Interpretation was executed.

The two basic issues currently before this Board deal with the amount of pay, if any, due to the Claimant from the date of the initial disqualification, without a hearing, at Clearfield, Pennsylvania, until the Claimant attempted to exercise seniority at Altoona, and the amount of compensation due, if any, since the attempted exercise of seniority at Altoona.

In Interpretation No. 1, we noted that the Employee received certain pay guarantees from the date of the disqualification at Clearfield. We ruled, in Interpretation No. 1, that the Employee was not entitled to any additional pay beyond that which he had received up until the attempted exercise of seniority at Altoona. We re-confirm that ruling with the understanding, of course, that said ruling is limited solely to the particular facts and circumstances of this case and the status of the Claimant at the time of the disqualification at Clearfield, and it is not necessarily precedent to another set of circumstances which do not parallel the facts in this case.

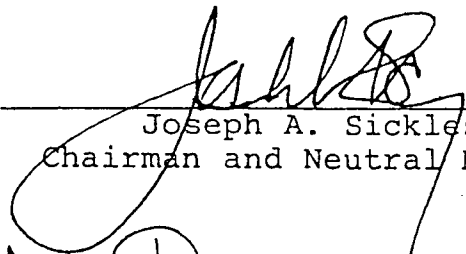
We do feel, however, that the Claimant is entitled to be made "whole" from the period of time subsequent to his attempt to exercise his seniority at Altoona, Pennsylvania. (See the Claimant's November 25, 1983 letter to the Trainmaster.)

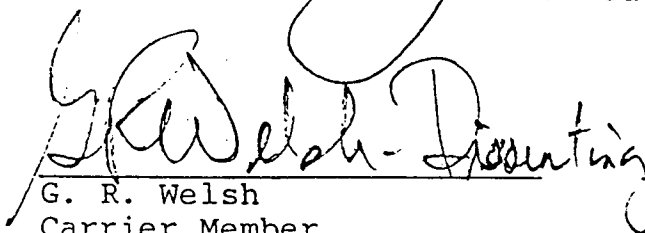
Although the Employee may have received certain guarantees subsequent to that attempted exercise of seniority, we are of the view that the Claimant should be compensated in the full amount that he would have received had his attempted exercise of seniority at Altoona been honored, minus the amounts that he did receive from other sources.

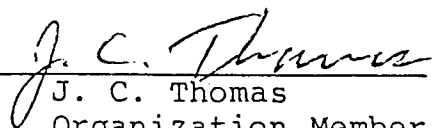
The Board has attempted to outline and trace the events since that time in an effort to ascertain what would have occurred concerning the employment status of the Claimant. However, we find that it is virtually impossible to predict with certainty the actual events. It is important to bear in mind, in that circumstance, that the Carrier created the problem in the first instance by disqualifying the Employee without giving him a hearing, and, thus, it cannot avoid responsibility in fashioning the remedy because of certain impossibility to predict precisely what the events might have been had there not been a violation. Accordingly, we award the compensation to the Claimant for the amount that he would have received had his exercise of seniority been honored in November, 1983 (minus the amounts he actually received from other sources), and that remedy shall continue until March 31, 1984.

Thereafter, the Employee will be considered to be an unassigned Yardmaster, and his rights will be those accorded him by the pertinent Agreements between the parties.

This Interpretation is issued this 21st day of March, 1984.


Joseph A. Sickles
Chairman and Neutral Member


G. R. Welsh
Carrier Member


J. C. Thomas
Organization Member