

Public Law Board No. 4195

Parties to Dispute

United Transportation Union -)	
Yardmasters Department)	Case No. 2
)	
vs)	Award No. 2
)	
The Long Island Railroad Company)	

STATEMENT OF CLAIM

One day's pay is due Yardmaster D. Rice for August 18, 1986 when a junior Yardmaster was improperly used to cover RYM-5, a job to which Mr. Rice was entitled.

FINDINGS

The Claimant's regular assignment was RYM-2. According to the Carrier's correspondence to the Organization under date of December 29, 1986 this position is covered by RYM-5 during the Sunday and Monday relief days. Monday, August 18, 1986 was the Claimant's relief day. He was called and offered position FAYM-1 and refused. When position RYM-5 went vacant, the Claimant was not offered this position. On August 19, 1986 the Claimant filed a claim cited in the foregoing Statement of Claim since he was not called to fill this vacancy and it was filled by a junior Yardmaster. In its denial of the claim in the letter cited above the Carrier's officer states that the "...Association's assertion that incumbency status supersedes all other circumstances is unsupported by either agreement language or past practice....once a Yardmaster has refused relief day work...the Yardmaster will not be offered any additional job which may become vacant during the balance of that day".

The parties to this dispute are not only at odds relative to whether Rule 29, cited in Award No. 1 of this Public Law Board, provides privileges to a Yardmaster for relief work on his rest day if he refuses one assignment and another develops, but they are also at odds relative to whether conclusions herein by the Board are to be guided by res judicata after it considerations in Award No. 1 of this Board. According to the Carrier, this case is just like

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the one already considered by the Board in Case No. 1; according to the Organization, there are differences. Ironically, if the Carrier were correct, the Board would generally be bound by precedent and would need proceed no further in its considerations herein. A close study of the record in this case, and comparison with that of Case No. 1 of this Board, permits the conclusion, however, that there is an important difference. In this case, the Claimant was the incumbent of the position which went vacant on this rest day, although the position changed designation from RYM-2 to RYM-5. In case No. 1 the Claimant was not incumbent of the position for which he was grieving relief. Does it make a difference? In the estimation of the Board, it does. Rule 29(e) states the following and it is cited here for the record:

- (1) The regular incumbent of the position will have preference to work the position on his rest day.
- (2) If the regular incumbent does not desire to work, then the senior Yardmaster in the Yard who has indicated his desire to work will be used.

Case No. 1 of this Board involved a dispute which was resolved by reference to Rule 29(e) (2) as stated in the Award of that case. This case involves a dispute which must be resolved by reference to Rule 29(e) (1).

The Carrier documents here a past practice of not permitting Yardmasters the privilege of working a position on a day if they had already refused work on another position on that same day. The argument by the Organization is that such practice, which apparently originated with other crafts, is contrary to the clear intent of Rule 29. The Board notes here again arguments introduced by the parties which do not coincide with those exchanged on property relative to this dispute and it may not properly consider such information when framing its Award in this case (Public Law Board 4194, cites [p.3]).

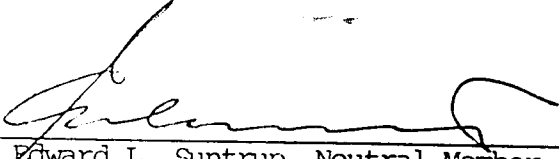
Rule (e) (1) is clear and unambiguous. The Claimant to this case was incumbent of the position. He wanted to work. He was not asked. As underlined in Award No. 1 of this Board, which reasoning applies equally here, a past practice may not supercede clear contract language when the latter is present, nor is such language nullified in its intent absent claims filed to dispute its meaning (See First Division 21780; Second Division 5675; Third Division 18957 inter alia).

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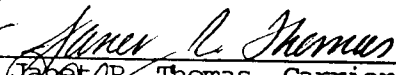
On merits, the instant claim must be sustained. Under Rule 32(h) of the Agreement the Claimant shall be paid one day's pay at straight time rate.

AWARD

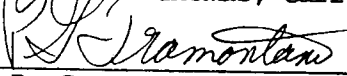
Claim sustained in accordance with Findings. All compensation due the Claimant shall be paid to him within thirty (30) days of the date of this Award.



Edward L. Suntrup, Neutral Member



Janet B. Thomas, Carrier Member



P. G. Tramontano, Employee Member

Date: MARCH 15, 1988