

PROCEEDINGS BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1016

AWARD NO. 41

Case No. 41

Referee Fred Blackwell

Carrier Member: J. H. Burton

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 Agreement was violated when the Carrier used Harrisburg Seniority District employes to perform track work on the Philadelphia Division Seniority District from July 15, 1985 through November 22, 1985 (System Dockets CR-2207-2239).

(2) Because of the violation referred to in Part (1) hereof, the following listed claimants shall each be allowed ten (10) hours of pay at their respective straight time rates for each day of the violation and applicable overtime, travel time and lunch compensation:

J. Griffin	B. C. Mattson	R. G. Shaffer
L. Wilson	R. W. Brown	W. L. Stokes
K. L. Donaldson	T. P. Boast	T. W. Evans
F. Greenlee	J. Urbanek	D. C. Rhodes
K. J. McConnell	R. L. Coleman	K. L. Barnes
M. P. Mitchell	F. E. Anderson	C. H. Carroll
C. Jones	J. P. McGough, Jr.	G. T. Lee
C. Robertson	B. S. King	G. Hasbrouck
W. J. Duff	T. J. Sutton	K. F. Adams
D. P. Cantolina	J. M. Hubler	R. W. Schmitt
T. R. Johnson	R. A. Airhart	D. Degand

FINDINGS:

Upon the whole record and all the evidence, and after hearing on August 17, 1989, 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

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amended, and that this Board is duly constituted by agreement and has jurisdiction of the parties and of the subject matter.

OPINION

The Claimants, at the times herein pertinent, held seniority on the Philadelphia Division Seniority District, and were regularly assigned members of Track Department Gangs (Gang 56161 and Gang 56164) employed on the Philadelphia Division Seniority District. The Claimants allege that the Carrier violated Rules 3 and 4 of the Schedule Agreement when the Carrier assigned work at locations within the Philadelphia Division Seniority District, to thirty-three (33) members of Tie Renewal Gang TK-134, who hold seniority on the Harrisburg Seniority District and who do not hold seniority on the Philadelphia Division Seniority District. The target Employee members of Tie Renewal Gang TK-134 were used in the allegedly impermissible work from July 15 - November 22, 1985. The remedy requested is that each Claimant be allowed ten (10) hours straight rate pay for each day of the violation and applicable overtime, travel time, and lunch compensation.

The Organization's position is that the claims should be sustained on the grounds that the Carrier was prohibited by Rule 3, Section 4. (a) (b) (c) (e) and (f), and Rule 4, Sections 1. and 5., of the Agreement from unilaterally assigning Gang TK-134 from the Harrisburg Seniority District to the performance of work in the Philadelphia Division Seniority District; that the Carrier did not have an Agreement with the District Chairman permitting the

use of Gang TK-134 on work in the Philadelphia Division Seniority District; and that even if such an Agreement had been made orally between the Carrier and the District Chairman, the Agreement would not be enforceable because the District Chairman lacks authority to make such an Agreement under the parties' Schedule Agreement. The Organization submits further that the fact that the Claimants were on duty and under pay during the claim period does not bar their claim for compensation for the work performed by the members of Gang TK-134.

The Carrier's position is that the grievance should be denied on the grounds that, while the Carrier recognizes that it could not unilaterally transfer Track Employees from the Harrisburg Seniority District to work on the Philadelphia Seniority District, the Carrier asserts that it worked out an arrangement with the District Chairman to make the transfer; and that such arrangement should serve to estop the General Chairman from repudiating that arrangement in order to progress the herein compensatory claims of the Trackmen on the Philadelphia Seniority District. The Carrier says further that if the Carrier is found to be in violation of the Agreement by its action of assigning Employees from the Harrisburg Seniority District to perform work on the Philadelphia Seniority District, the Claimants should not be allowed compensation because they were on duty and under pay during the claim period.

* * * * *

After due study of the record as a whole, including the arguments presented by the parties' submissions in support of their positions in the case, it is concluded that the members of Gang TK-134 from the Harrisburg Seniority District did not hold seniority on the Philadelphia Seniority District when this dispute arose and that the District Chairman lacked authority to agree to the Carrier's use of Gang TK-134 in the Philadelphia Seniority District. Accordingly, it is found on the whole record that it was contractually impermissible for the Carrier to assign the members of Gang TK-134 to the performance of work at locations in the Philadelphia Seniority District in the period July 15 - November 22, 1985; and that the Carrier's action of using Gang TK-134 to perform work in the Philadelphia Seniority District deprived the Claimants of contractually secured work opportunities in the Philadelphia Seniority District, in violation of Rule 3, Section 4. (a) (b) (c) (e) and (f) and Rule 4, Sections 1. and 5. of the applicable Agreement.

Having made this finding of an Agreement violation by the Carrier, we turn now to the consideration of the Carrier defenses that compensation should be disallowed on the ground that the use of Gang TK-134 was pursuant to the Carrier's understanding with the District Chairman, and/or on the ground that the Claimants were on duty and under pay during the period of the Carrier's use of Gang TK-134 on the Philadelphia Seniority District.

In assessing this first ground, inasmuch as the Carrier

acknowledges that it had no contract authority to make a unilateral assignment of Harrisburg Seniority District Employees to perform work in the Philadelphia Seniority District, the Board must first assess the fact basis of the Carrier's contended Agreement with the District Chairman. Several Carrier Officials attested to the fact that such an Agreement was made, whereas, the District Chairman in a February 25, 1986 letter, (Organization Exhibit A-6) denies same, stating that his sole involvement in the matter was "to guarantee that employees would not be compelled to travel out of Division if they did not choose to."

The assessment of these conflicting fact allegations is that the involved Carrier Officials initially had a good faith belief that an understanding had been reached with the District Chairman that allowed the Carrier to assign members of Gang TK-134 from the Harrisburg Seniority District across seniority district lines to perform work at locations in the Philadelphia Seniority District. The Carrier had knowledge, however, that only the General Chairman and not the District Chairman, had authority to make such an Agreement/Understanding and hence the Carrier acted at its peril in deciding to go forward on the strength of what had occurred between Carrier Officials and the District Chairman. Therefore, when the General Chairman, by letter dated August 3, 1985, registered his objection to, and filed the herein claims respecting, the Carrier's use of Gang TK-134 to perform work in the Philadelphia Seniority District, the Carrier had no basis for

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continuing the use of the members of Gang TK-134 on work projects in the Philadelphia Seniority District.

The Board in these circumstances finds that although the Carrier arguably had an acceptable reason for instituting the use of Gang TK-134 in the Philadelphia Seniority District on July 15, 1985, such reasons ceased to exist when the General Chairman protested such use of Gang TK-134 by his August 3, 1985 letter (Organization Exhibit A-1). Accordingly, the Claimants' demand for compensation is estopped for the period July 15 - August 3, 1985.

Beyond this the Board has considered and finds unpersuasive the Carrier's argument that notwithstanding the Board finding of an Agreement violation by the Carrier, the Claimants should not be awarded compensation for the work performed by Gang TK-134, because the Claimants were on duty and under pay during the period that the Gang was used at work locations on the Philadelphia Seniority District.

Prior authorities on this facet of the case have reached conflicting results. A number of authorities cited by the Carrier hold that notwithstanding a contract violation, compensation is allowable only where Claimants show a monetary loss from their regular work assignments in connection with the violation. Second Division Award 5890 and Third Division Award 18305. Contra authorities have ruled that full employment does not negate a compensatory award in situations where there is valid need to preserve the integrity of the Agreement.

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Important seniority rights are in question in this case, because an Employee whose name is on a seniority roster in an Agreement designated seniority district, owns a vested right to perform work in that seniority district that accrues to his standing and status on the district seniority roster. The Seniority District boundaries established by the parties' Agreement to protect and enforce that right, have been improperly crossed by the Carrier action, resulting in the Claimants loss of work opportunities, and hence the principle that compensation is warranted in order to preserve and protect the integrity of the Agreement, is applicable to this dispute. For similar rulings between these same parties see Award No. 34 of Special Board of Adjustment No. 1016 (07-28-89) and Award No. 7 of Public Law Board No. 3781 (02-12-86).

The need to preserve the integrity of the contract does not extend to the herein claims for overtime, travel time, and lunch compensation, however, and hence these elements of compensation are denied.

In view of the foregoing, and based on the record as a whole, the claim is sustained (as provided herein) for the period August 4 - November 22, 1985, but the claims for compensation for overtime, travel time, and lunch compensation are denied. Claimants shall share an equal amount of the aggregate straight-time hours worked by the target employees of Tie Renewal Gang TK-134, for the period August 4 - November 22, 1985.

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This Award will not be a precedent except in circumstances that are the same as the particular circumstances of this case are present.

AWARD:

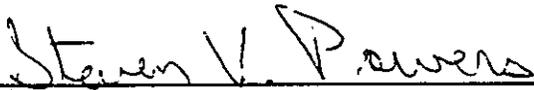
Claims sustained in part and denied in part as per the Opinion.

The Carrier shall comply with this Award within thirty (30) days from the date hereof.

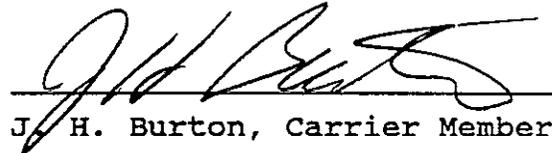
BY ORDER OF SPECIAL BOARD OF ADJUSTMENT NO. 1016



Fred Blackwell, Neutral Member



S. V. Powers, Labor Member



J. H. Burton, Carrier Member

Executed on FEB 01 1991

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