

Award No. 14

Case No. 16

Docket No. MW-1097

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute Illinois Central Gulf Railroad

Statement of Claim Carrier violated the effective Agreement on or about January 17, 1977, by unfairly and arbitrarily pulling Claimant out of service for his alleged failure to exercise his displacement rights.

2. Claimant, Claude Mimes, shall be returned to service and shall be compensated for all lost wages commencing with December 12, 1976, up until he is actually returned to service.

Findings The Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated January 23, 1978, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

Claimant Trackman's position was abolished December 16, 1976. Claimant, apparently checked with the Division Engineer's office on December 20, 27 and 28, 1976 to determine if there were any jobs available to him. He was advised "there was no place for him". In fact, on December 28, 1976, a Mrs. Hedleston, who worked in the Division Engineer's office, after informing him that there was no place to work typed out a letter protecting his seniority, which Claimant signed.

Claimant was also advised by Mrs. Kaler on December 30, 1976 that he was being assigned to a position which was expected to commence work on January 3 or January 10, 1977. However, when he received no notice to go to work Claimant returned to the Superintendent's office, on January 6, to sign up for his unemployment benefits, at which time he ascertained that the position to which he had been assigned December 30th was cancelled. Claimant was advised at

that time that there were three younger men ^{or} then he working at Water Valley, Mississippi, which he could roll in on. Mrs. Kaler advised Claimant that she had called three of the ten senior employees who were furloughed, and that they had indicated they were going to go to Water Valley to roll in. In such circumstances Claimant left the Superintendent's office with the understanding that there were no junior employees left that he could roll in on. The following week Claimant received a letter from the Division Engineer dated January 7 advising that he lost his employee relationship as a result of his failure to comply with Rule 30(e). Rule 30 provides:

- (a) Employees will have the right, except as provided in paragraph (b) hereof, to displace the employees junior in the service...in any rank in which they hold seniority, provided they are competent to perform the duties of the employees displaced and that such displacement rights are asserted within fifteen days from the date affected. When force is increased, they will return to their former positions, except as otherwise provided in this agreement.
- (b) Employees who assert their seniority displacement rights in lower ranks as provided in paragraph (a) may continue to work in such ranks if they desire,....until a shortage of employees occurs in the higher rank from which they were furloughed.
- (c) Employees, when laid off or displaced, holding positions as machine operators in the Roadway Department, will retain seniority in the class and rank in the sub-department from which advanced and must exhaust displacing rights in the Roadway Department before returning to the sub-department from which advanced and displacing any junior employee in any class in which seniority is maintained.
- (d) When bulletined positions are abolished and restored within 60 days or less, the employees will have the privilege of returning to former positions, providing they have not displaced an employee in the same classification;....
- (e) Seniority rights in displacing other employees must be exercised within 15 days after the employees are laid off or displaced. Employees laid off while on vacation or sick leave will have 15 days after termination thereof in which to dispute."

Two months after Claimant's employment records were closed the Parties to the Agreement before this Board negotiated an Agreement establishing a procedure which permitted a senior employee whose job was abolished, or, who was displaced, to voluntarily accept a furlough status rather than to exercise his seniority.


Concurrent with said Agreement the Parties also agreed in another letter of Understanding, as follows:

"Upon your acceptance of the Letter of Understanding dated March 1, 1977 concerning senior employees electing to assume a furloughed status, we agree to restore the seniority, without any liability to the company of those employees who lose their seniority as a result of their failure to exercise their displacement rights. This understanding pertains solely to those employees who lost or will lose their seniority in the period of from October 1, 1976 to and including March 13, 1977. This understanding does not recover those employees who failed to bid a retainer or failed to file a retainer provided in Rule 10 in the schedule of Rules."

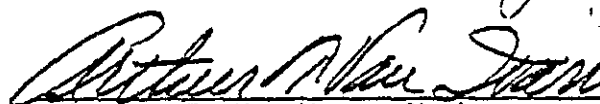
As a result of the above understanding Claimant was informed that his seniority was restored. He was advised on April 18, 1977, by the Division Engineer, and instructed to report for work at Greenwin, Mississippi within seven days. Claimant returned to work on April 26. Two months thereafter Claimant was dismissed for cause which is not here relevant.

The Board finds that Claimant is not entitled to wages lost during the period of December 22, 1976 until April 19, 1977. There has been no showing that even if Claimant had maintained his seniority that he could have worked. The implication is that he could not have. The March 1, 1977 letter of Understanding quoted hereinabove effectively removes loss of seniority as a basis of claim and for any liability. In the particular circumstances this Claim is denied.

Award Claim denied.


John Palloni, Employee Member


M. J. Hagen, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member