

Award No. 15

Case No. 7

Docket No. MW-1098

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute Illinois Central Gulf Railroad

Statement of Claim 1. Carrier violated the effective Agreement on January 5, 1977, by unfairly and arbitrarily dismissing Claimant from service.
2. Claimant J. C. Williams shall be reinstated to Carrier's service, compensated for all lost wages back to December 22, 1976, and have all seniority rights and other rights returned unimpaired.

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 was displaced from his Trackman position at Granada, Mississippi on December 22, 1976. Sixteen days later, January 7, 1977, Claimant was informed by the Division Engineer that he had failed to exercise his seniority on positions occupied by Employees who were younger in seniority and that he therefore had lost his employee relationship with the Company as a result of his failure to comply with Rule 30(e) which 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, without loss of seniority 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)

(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 displace."

The Parties entered into a Voluntary Furlough Agreement which provided therein for a procedure whereby senior employees, whose jobs were abolished or who were displaced, could voluntarily accept a furlough status rather than to exercise their seniority. Concurrently with that Agreement the Parties also agreed in another Letter of Understanding, dated March 1, 1977, as follows:

"Upon your acceptance of the Letter of Understanding dated March 1, 1977 concerning senior employees electing to assume a furlough status, we agree to restore the seniority, without any liability to the company, of those employees who lost 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 from October 1, 1976 to and including March 13, 1977. This Understanding does not cover those employees who failed to file a re-tainer as provided in Rule 10 of the Schedule of Rules."

It is clear from the record that while here Claimant may have a basis for contending that he had done everything possible, that he had acted in good faith and in line with advice accorded him by Carrier representatives and therefore his seniority should not have been terminated, the fact remains that no showing has been made by this particular employee that otherwise his seniority would have allowed him to work during the entire claim period. Lastly, and in any event, the March 1, 1977 letter of Understanding serves to absolve the Carrier of any potential liability it may have occurred when, as here, it took away the seniority of those employees who failed to displace younger employees between the period of October 1, 1976 to March 13, 1977.

In the circumstances this Claim will be denied.

Award Claim denied.

John Palloni
J. Palloni, Employee Member

M. J. Hagen
M. J. Hagen, Carrier Member

Arthur T. Van Wart
Arthur T. Van Wart, Chairman
and Neutral Member

Issued at Wilmington, Delaware, April 18, 1979.