

PUBLIC LAW BOARD NO. 2439

Award No. 103  
Case No. 103

PARTIES  
TO  
DISPUTE

Brotherhood of Maintenance of Way Employees  
and  
Southern Pacific Transportation Company (Western Lines)

STATEMENT  
OF CLAIM

- "1. That the Carrier violated the provisions of the current agreement when it terminated Track Laborer Atanacio Ramiriz's seniority and employment without first giving claimant the benefits of a fair and impartial hearing.
2. That Carrier further violated said agreement when on March 11, 1985, it declined or otherwise refused to allow claimant to return to his former position after being released for full duty by his attending physician.
3. That Carrier will be required to return claimant to his former position with seniority and all other rights restored unimpaired, with compensation for all wage loss suffered during the intervening period."

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

Claimant, an employee of some 16 years service at the time of the incident herein, was subjected to an on-duty injury in January of 1984. Following an absence of more than a year, claimant returned to work with a release from his attending physician. Shortly after returning to work, claimant was informed that he had been terminated prior to that time by Carrier. Carrier alleges that on October 12, 1984, in accordance with the provisions of Appendix "R", claimant had been notified by certified mail that his services had been terminated. Although no return receipt had been received by Carrier, Carrier assumed that the letter had been delivered. The matter is further complicated because claimant had begun a law suit against Carrier for the alleged injuries received on January 24, 1984, which included all

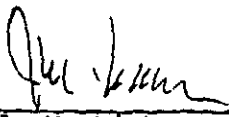
claims for wage loss up to and through March 11, 1985.

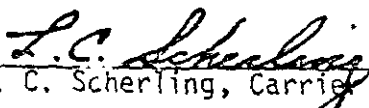
There is considerable confusion with respect to the processing of this entire matter. Carrier made some assumptions with respect to the delivery of various notifications which were not supported by any records. On the other hand, claimant's long absence without notification to Carrier was an obvious problem. Among other things emerging from this situation, Carrier insists that the appeal involved herein was untimely, having been filed outside the time limits specified in the agreement (more than 60 days from the occurrence). Thus, according to Carrier, claimant's services were terminated on October 12, 1984, and the appeal in terms of the claim was initiated on March 25, 1985.

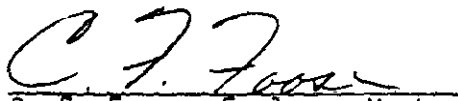
It is the Board's view that the record is so confused with respect to facts that it is impossible to deal with this matter on the merits. One thing is apparent, however, there is no evidence that claimant received the letter of termination issued on October 12, 1984. It is this Board's view that the interests of both parties could best be served if this matter were remanded to the property for the purpose of a hearing in accordance with Rule 45. That hearing should be held for the purpose of investigating the facts surrounding claimant's absence and the charges brought against him by Carrier for violation of Rule 810, and other relevant rules of Carrier. Following the investigatory hearing, if the parties are unable to resolve this matter, this Board will again maintain its jurisdiction over this matter to resolve any outstanding issues.

AWARD

This matter is remanded to the parties for the purpose of an investigatory hearing in accordance with the findings above.

  
I. M. Lieberman, Neutral-Chairman

  
L. C. Scherling, Carrier Member

  
C. F. Foose, Employee Member

San Francisco, California

May 29, 1986