

PUBLIC LAW BOARD NO. 2439

Award No. 109

Case No. 109

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

STATEMENT 1. The Carrier violated the provisions of the  
OF CLAIM: current Agreement when it ignored Mr. R. F.  
Morgan's doctor's return to full duty release,  
thereby denying Mr. Morgan of work and compen-  
sation to which he was rightfully entitled.  
  
2. Carrier shall now reinstate Mr. Morgan to his  
former position with Carrier with compensation  
for all time lost therefrom commencing July 17,  
1984 and continuing until such time is placed  
on said position.

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.

On March 19, 1975, Claimant sustained an on-duty injury to his back while employed by Carrier in the capacity of Water Service Foreman. Subsequently, Claimant was awarded a jury verdict of approximately \$90,000 for his injury. According to Carrier, in the course of his testimony at that trial, he testified that he would never be able to perform his normal work on the railroad due to his back injury. On August 10, 1984, Petitioner addressed a

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letter to Carrier indicating that Claimant should be returned to service based on an examination by his doctor in July of that year. Carrier did not recognize Claimant's ability to return to work and failed to reinstate him at that time. Subsequently, in October of 1986 Claimant again was evaluated by his own physician who stated in a letter that Claimant had no physical disabilities which would preclude him from any employment. Ultimately he was advised by Carrier that he was not considered to be an employee due to the past circumstances involved in his situation.

Petitioner argues principally that Carrier violated the Agreement by not reinstating Claimant to service. Indeed if Carrier doubted his ability to return to service and the medical department concurred in this opinion, according to the Agreement, a three doctor panel should be established to assess whether indeed Claimant had the physical ability to return to full employment. This Carrier refused to do. According to Petitioner, Claimant in no way relinquished his right to employment based on the award he received for the injuries sustained in 1975.

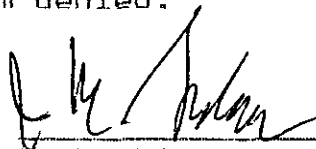
Carrier argues that Claimant simply showed no interest in returning to his employment for the period from 1975 until 1984. Furthermore, he abandoned that approach in 1984 and again two years later made a second attempt at reemployment.

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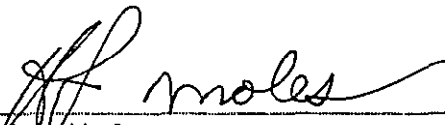
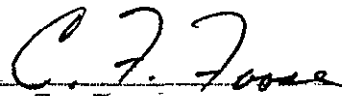
As the Board views it Claimant, if indeed he had rights to return to work after the jury verdict of 1975 (and there is some dispute with respect to the testimony at that trial), it is evident that he had been silent for approximately nine years following that event. It must be concluded objectively Claimant abandoned his position because of the lack of any contact with Carrier for a period of at least nine years following the jury trial. There was no indication of what he did during that period of time or whether indeed he was employed or could have been employed by Carrier. There is no question but that this matter involves a job abandonment. Therefore, the claim must be denied.

AWARD

Claim denied.



I. M. Lieberman, Neutral-Chairman

H. L. Moles,  
Carrier MemberC. F. Foote,  
Employee Member

San Francisco, California

May, 1988

June 3