

PUBLIC LAW BOARD NO. 2439

Award No. 33
Case No. 33

PARTIES
TO
DISPUTE

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

STATEMENT
OF CLAIM

"1. That the Carrier violated the provisions of the current Agreement when on June 26, 1980 it dismissed Mr. Loranzo Ayala from service as a result of his failure to make a timely displacement as outlined in Rule 13(b) of the current Agreement.

2. That Mr. Ayala now be reinstated to his Track Laborer position on Extra Gang No. 39 with seniority and all other rights unimpaired and that he compensated for all time lost as a result of his improper dismissal."

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.

The record indicates that on June 13, 1980 Claimant's position on Extra Gang 35 headquartered at Phoenix, Arizona was abolished. Under the Agreement, he had ten days in which to make a seniority displacement. On June 24, the eleventh day, Claimant reported and worked on Extra Gang 39 at Hayden, Arizona. On the following day, he was served — notice that he was terminated.

Rule 13(b) provides as follows:

"Displacements (b) - An employe losing his position through force reduction, position abolished, being displaced or returning to service from disability retirement under the provisions of the Railroad Retirement Act, shall, within 10 days following loss of position or release for return to service, exercise his seniority in the following order:

1. First, displace any employe in the same class who is junior to

him in seniority.

2. Second, if there is no junior employe in that class, displace any junior employe in any other class in which he has established seniority.

An employe who fails to exercise a displacement to which is is entitled under the foregoing, shall forfeit all seniority held by him under this agreement.

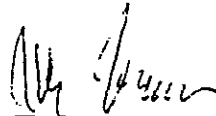
The provisions of this paragraph (b) shall not be interpreted to prevent an employe from exercising his seniority to acquire a position that has been advertised by bulletin. An employe who has filed an application for an advertised position before or during the first ten day period in which he may make displacement may withhold the exercise of his displacement right pending issuance of such assignment notice, and in the event he is not awarded the position his right to make displacement shall be protected for an additional ten day period after the date of issuance of such assignment notice."

The rule above, according to Carrier, is a self-executing rule and an employee who fails to displace within the ten day time limit automatically forfeits his seniority. Petitioner indicates that Claimant left his residence well in advance of the assigned starting time on his new assignment but while en route experienced difficulties with his automobile. Thus, Petitioner argues, that Claimant's tardiness was as a result of an automobile problem and was not within his control. He produced evidence to substantiate his one day excess reporting time.

An additional factor to be considered in the disposition of this dispute is that Claimant had displaced in similar circumstances five times in his six years of service and in each instance his displacement was timely. He was obviously fully aware of the intent of the time factor provided for in Rule 13(b). Furthermore, in this instance, Claimant made no attempt to inform Carrier of the difficulties he was experiencing on the last day of the period but simply waited until the day following the ten day period to report. This was unfortunate but inexcusable. Carrier had no choice but to comply with the automatic provisions of Rule 13(b). The intent of the Rule is clear, unambiguous and unequivocal and unfortunate though the circumstances are, there can be no deviation in the interest of everybody concerned. The claim must be denied.

AWARD

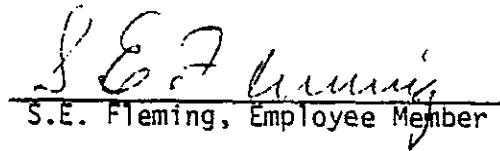
Claim denied.



I.M. Lieberman, Neutral-Chairman



L.C. Scherling, Carrier Member



S.E. Fleming, Employee Member

January 24, 1981
San Francisco, CA