

PUBLIC LAW BOARD NO. 2439

Award No. 34
Case No. 34

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 25, 1980 it dismissed Mr. A.P. Quiroz from service for his alleged failure to timely displace a junior employee in accordance with the provisions of Rule 13(b) of the current Agreement.

2. That MR. A.P. Quiroz now be reinstated to his Track Laborer's position with seniority and all other rights restored unimpaired and compensated for all time lost therefrom beginning June 25, 1980 and all days subsequent thereto until he is returned to his rightful 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.

Claimant herein was displaced from his position on Extra Gang 35 on June 13, 1980.

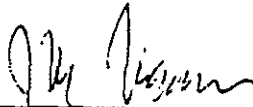
On June 25, twelve days thereafter, he reported at Hayden, Arizona to work on Extra Gang 39. By letter dated the same day Carrier served notice of his termination under Rule 13(b).

The dispute herein is virtually identical to that discussed by this Board in Award No. 33. The circumstances are almost the same. In this case, however, Claimant's defense was that he was of the belief that the time referred to in the Rule referred to working days rather than calendar days. Unfortunately, however, his position is not persuasive in light of the fact that he has been subjected to the provisions of the Rule on seven prior displacements and certainly should have been aware that the Rule refers to calendar days only. The intent of the Rule and its implications were discussed adequately in Award No. 33. Unfortunately, in this instance, it must be applied si-

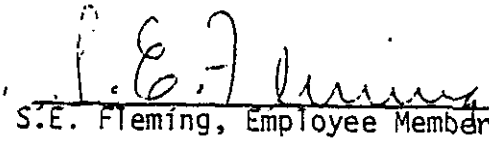
milarly and the claim is without merit.

AWARD

Claim denied.



I.M. Lieberman, Neutral-Chairman


L.C. Scherling, Carrier Member
S.E. Fleming, Employee Member

January 26, 1981
San Francisco, CA