

PUBLIC LAW BOARD NO. 2439

Award No. 58

Case No. 58

PARTIES
TO
DISPUTE

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

STATEMENT
OF CLAIM

- "1. The Carrier violated the provisions of the current Agreement when on April 5, 1982, it refused to allow Mr. M. R. Arnold to displace in Accordance with Rule 13 of said Agreement, and instead, informed Mr. Arnold that he was dismissed from the service of the Southern Pacific Transportation Company for his failure to make his displacement within the time frame as provided for by the rule. The Carrier further violated said Agreement when it failed to accord Mr. Arnold a hearing as provided for in Rule 45.
2. Mr. M. R. Arnold be reinstated to to the service of the Carrier and compensated for all wage loss suffered."

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's service with Carrier began on December 4, 1973. On March 22, 1982, he was displaced from his job as track foreman on an extra gang. Claimant, finding no junior foreman whom he could displace, exercised his displacement rights on March 22, 1982, at Truckee, California, to the position of track laborer. Having reported on March 29 and finding that the gang had already begun its work on the shift in question, Claimant was not allowed to work that day and returned to his home. He had intended, as expressed to the foreman of that gang, to begin working and be present on March 30, 1982. The commute from Claimant's home to the location of his gang was 70 miles. On March 30, 1982, due to a severe snowstorm, the State Department of Transportation closed the lanes of the Interstate and, hence, Claimant was not permitted to travel to his destination on that date. On March 31 and April 1 the same conditions obtained and Claimant was unable to travel to his job, having been turned back by either the Department of Transportation or the State Highway Patrol owing to the severe blizzards and avalanche danger in the area. Mr. Arnold

physically appeared at the Company to make his displacement on April 5, 1982, a Monday. He made no contact with the Carrier following his March 29 appearance until that Monday, April 5. On April 5 his seniority was terminated by Carrier in accordance with the provisions of Rule 13 (b) of the Agreement.

Rule 13 (b) provides as follows:

"Displacements. - (b) An employee 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 ten (10) calendar days following loss of position or release for return to service, exercise his seniority in the following order:

1. First, displace any employee in the same class who is junior to him in seniority.
2. Second, if there is no junior employee in that class, displace any junior employee in any other class in which he has established seniority.

An employee who fails to exercise a displacement to which he is entitled under the foregoing shall forfeit all seniority held by him under this Agreement and his employment shall be terminated."

Carrier maintains that it has not violated any provisions of the Agreement in its action with respect to Claimant. Carrier states that Claimant was displaced and had until April 1 to make a displacement himself and did not do so. Further, there is no evidence, according to Carrier, that he attempted to contact anyone concerning displacement until April 5, after his initial visit. Carrier also notes that the roads between Claimant's home and the work site were open from time to time during the days in question, even though they had been closed for substantial periods of time. Furthermore, there was no disruption whatever of telephone service to Carrier from Claimant's location. Carrier insists that Claimant could have made contact with Carrier had he sincerely wished to make the displacement in timely fashion. Carrier also notes that Claimant's prior attendance record was quite poor and he was considered to be an unreliable employee in that regard. Further, Carrier states that there was no violation of any contractual rule by Carrier's failure to accord the Claimant a hearing since this was not a disciplinary matter.

The organization's basic position is that Carrier insisted on implementing Rule 13 (b) to the letter in this instance, even though there were circumstances involved over which Claimant had no control. Those circumstances, according to the

organization, were that the days in question involved one of the most severe snowstorms to have struck the Sierra Nevada Mountains in a great number of years. The organization notes that on March 29 Mr. Arnold did, indeed, discuss his displacement intent with the Roadmaster and indicated that he would be present to work on the following day. This proved to be impossible due to the weather conditions. Petitioner states that although the highway was open for a portion of the days which Claimant had to make his displacement, he was prevented from making the physical displacement on the day in question as a result of the storm.

Although it is apparent that Carrier had the right, based on a strict interpretation of Rule 13(b), to terminate Claimant's seniority, in this instance its actions appear to have been somewhat arbitrary and unjustified. It is apparent that on March 29 Claimant did, indeed, indicate his intent to displace for a particular position but was not allowed to proceed to the job on that day. On the following two days, the road was closed. On the crucial tenth day, April 1, the road was only open from noon on and then closed again on the following day, for part of the day. Thus, it would have been impossible under any circumstances for Claimant to have been present to work at the beginning of the shift on either March 30, March 31 or April 1. Those facts are supported by documentation from the State Highway Department. Based on that information, it was unreasonable of Carrier to deprive Claimant of his seniority and employment due to his inability to report for work on those days. On the other hand, however, Claimant was in a position to at least have communicated with Carrier during the three days he did not report for work. He did not do so and, hence, must bear some responsibility for the predicament within which he found himself. There is no reason why an employee with both the background as a foreman and the years of service which this employee had, for not communicating with someone concerning his inability to report. Under the circumstances, therefore, the Board has concluded that the Claimant should be reinstated to his former position, with all rights unimpaired, but will receive no compensation for time lost. It also must be noted, in addition, that Claimant was not entitled to a hearing in this dispute since there was no discipline involved.

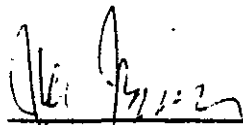
AWARD

Claimant will be reinstated to his former position, with all rights

unimpaired, but without compensation for time off work.

ORDER

Carrier will comply with the Award herein within thirty days from the date hereof.



I. M. Lieberman, Neutral-Chairman



L. C. Scherling, Carrier Member



C. F. Foose, Employee Member

San Francisco, CA

October 12, 1983