

PUBLIC LAW BOARD NO. 2439

Award No. 82
Case No. 82

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 removed Mr. E. G. Estrada's name from the appropriate seniority roster.
2. That Claimant E. G. Estrada be reinstated to the service of the Carrier with compensation for all time lost and with seniority and all other rights restored unimpaired."

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, with a seniority date of May 8, 1972, was furloughed when his position was abolished in August of 1981. The record indicates that he was recalled to service that year but there was no current address on file with the Carrier. Carrier terminated claimant on August 12, 1983, when it attempted to recall him and found no address on file. Subsequently the claim was filed on December 9, 1983.

Claimant's defense in this matter is that on several occasions he personally reported to the office in order to inquire as to when he would be recalled, making his availability fully known to Carrier. Further, Petitioner notes that claimant had been recalled in the past and that Carrier should, indeed, have had his former address on file but chose not to use it. The Organization argues that claimant made every effort to comply with Carrier's normal requirements but one and should be returned to service based on his obvious availability.


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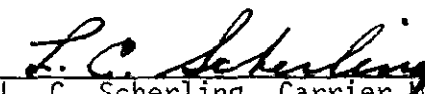
Carrier insists that the claim herein was untimely since it was filed some 119 days after claimant's termination. With respect to the major infraction involved, Carrier notes that Rule 15 of the agreement provides for automatic termination and forfeiture of seniority rights in the event that an employee who has been furloughed fails to advise the designated office in writing of the address at which he can be reached for purposes of recall.


It is clear that there is no exception taken to the fact that claimant did not file an address with Carrier as required by Rule 14 of the agreement. Rule 15 is a self-executing rule and since claimant had not provided Carrier with means of notifying him of the availability of a position, he has no recourse under the agreement. While the question of the tardiness in filing the claim may be debated in terms of when claimant found out that he was terminated, there is no question but that he did not comply with the Carrier's rules of which he was aware by virtue of his prior experience. The Board has no choice but to agree that Carrier conformed to the rules and there was no violation established by Petitioner.

AWARD

Claim denied.


I. M. Lieberman, Neutral-Chairman


L. C. Scherling, Carrier Member


C. F. Foose, Employee Member

San Francisco, CA

October , 1984