PUBLIC LAW BOARD NO. 2774

Award No. 157
Case No. 157

PARTIES TO DISPUTE: Brotherhood of Maintenance of Way Employes

and

Atchison, Topeka & Santa Fe Railway Company

STATEMENT OF CLAIM: "1. That the Carrier's decision on June 18, 1984 to disqualify and demote Extra Gang Foreman, Mr. G. A. Reyes from the position of Extra Gang Foreman was improper and in violation of Rule 8, Paragraph (c) of the Brotherhood of Maintenance of Way Agreement.

2. The Carrier will now be required to restore Claimant's seniority rights in the class of Foreman to the original date of July 24, 1978, and that he be compensated the differential in the rate of pay between that of what he received and he would have received had he not been improperly disqualified. "

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 hired by Carrier on July 18, 1977, was promoted to Track Foreman on July 24, 1978. By letter dated June 18, 1984, Claimant was notified by Carrier of his disqualification as a

Foreman in accordance with the terms of Rule 8 (c). Subsequently on August 24, 1984 the Organization wrote a letter to Carrier requesting an investigation with respect to the disqualification. The investigation was scheduled for September 14, 1984 to determine Claimant's inability alleged by Carrier to properly handle and discharge the duties of Foreman.

The hearing was postponed to September 21, 1984, and at Claimant's request, it was then cancelled. On November 13, 1985, the Organization filed a claim for reinstatement of the Claimant to his former position of Track Foreman, which is the genesis of the claim herein.

As a threshold question, Carrier raises the issue of the timeliness of the claim, contending that the claim was presented approximately 309 days since the notification of disqualification which was well beyond the 60 days from date of recurrence which was provided for in Rule 14 (a) (1). Petitioner on the other hand maintains that the claim herein is a continuing one and therefore, the time limit issue is not relevant. Contrary to the contentions of the Petitioner, the Board concludes that the claim herein was not timely filed. It is apparent that the claim was based upon a specific act which occured on the date of disqualification, namely June 18, 1984. It is well established

that even though a claim is not a continuous one, a continuing liability might result, but this does not per se create a continuing claim. In this instance, it is apparent that the action complained of was the disqualification which by no means can be considered to have been a continuing claim but a specific act. Many awards in the industry have concluded that claims such as this may not be considered continuing ones. See, for example, Third Division N.R.A.B. Award No. 14450 which held in pertinent part as follows:

> "Recent Awards of this Board consistently have held that the essential distinction between a continuing claim and a noncontinuing claim is whether the alleged violation in dispute is repeated on more than one occasion, or is a separate and definitive action which occurs on a particular date...."

For the reasons indicated, the claim herein was not timely filed and must be dismissed.

AWARD

Claim dismissed.

I.M. Lieberman, Neutral Member

C. F. Foose, Employe Member

G.M. Garmon, Carrier Member

February 11,1988
Chicago, Illinois