

PUBLIC LAW BOARD NO. 2774

Award No. 159

Case No. 159

PARTIES
TO
DISPUTE

Brotherhood of Maintenance of Way Employees
and
the Atchison, Topeka and Santa Fe Railway Company

STATEMENT
OF CLAIM

1. That the Carrier violated and continues to violate the provisions of the current Agreement when it refuses to reinstate Trackman C. P. Burkhart's seniority date as of May 7, 1973 after being dismissed for an overaccumulation of demerits on March 21, 1984, said action being capricious and unwarranted.
2. The Carrier will now be required to reinstate Claimant's foreman's seniority rights and the differential in rate of pay between that of Track Laborer and extra gang Foreman beginning August 26, 1985 and continuing forward."

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 Claimant had been terminated on March 21, 1984 for reason of accumulation of excessive demerits. Subsequently, on June 20, 1984, he was afforded and accepted a leniency reinstatement with seniority rights unimpaired, but restricted to working as a Trackman until such time as he could prove that he could be depended upon to function acceptably as a

Foreman, which had been his previous position. Reinstatement included 45 demerits outstanding on his record in June of 1984. Shortly after he returned to service, on August 17, 1984, he absented himself from duty without proper authority and his personal records stood with 55 demerits. Subsequently, on May 22, 1985, Claimant requested consideration to being restored to position of Foreman. This was denied by Carrier approximately two weeks later, based on the fact that he had not demonstrated, since his return to service, that he could handle and discharge the responsibilities of a supervisory position. It was based on this series of incidents that the claim herein was filed for reinstatement to his former position of Track Foreman.

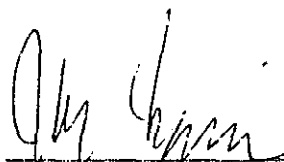
Petitioner insists that the extension of discipline involved in precluding Claimant's return to the position of Foreman was unwarranted and a violation of the Agreement. Carrier, on the other hand, maintains that Claimant has done nothing since his leniency reinstatement to change the opinion of the supervisors with respect to his ability to handle the job of supervisor. Furthermore, Carrier argues, that Claimant has not met his burden of proof to show that he can handle the position of Track Foreman.

It has long been held that the Carrier, exclusively, must make

the determination and has the responsibility for determining the fitness and ability of an employee for a particular position. This is indeed even more significant with the respect to the ability of an employee to handle a supervisory position. Carrier's decision in disputes involving such fitness and ability questions are not subject to being overturned unless it can be shown that the Carrier's action was based on arbitrary or capricious conclusions which are not warranted. In this instance, there is no evidence whatever to support Petitioner's contention that Claimant had demonstrated his ability to handle the Foreman's position. Furthermore, again it must be noted, that the Carrier has the exclusive responsibility to determine fitness and ability and, since no arbitrary or capricious action was indicated, the claim must be denied.

AWARD

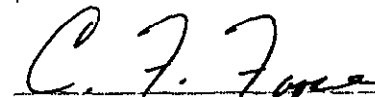
Claim denied.



I. M. Lieberman, Neutral-Chairman



G. M. Garmon,
Carrier Member



C. F. Foote,
Employee Member

Chicago, Illinois

March 31, 1988