

PUBLIC LAW BOARD NO. 2774

PARTIES Brotherhood of Maintenance of Way Employees
TO
DISPUTE: and

The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM:

1. That the Carrier's decision to remove former Group II Trackman, Darrell Joe, from service, effective April 3, 1989, was unjust.
2. Accordingly, Carrier should now be required to reinstate Claimant, Joe, to service with his seniority rights unimpaired and compensate him for all wages lost from April 3, 1989.

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 had been employed as a trackman and held seniority in the System Steel Gang. On April 3, 1989, he was in an off-in-force reduction status subject to recall. By letter dated March 9, 1989, Claimant Joe was advised by Carrier that he was being recalled to service as a trackman. He was instructed to report to the loading area at the depot in Gallup, New Mexico on Sunday, April 2, to depart for the gang's work site. The letter to him included the following language: "Failure to report as indicated above will result in loss of seniority."

On March 31st, Mr. Joe called Carrier's office to request a leave of absence so that he could attend a job interview for a position with Wal-Mart Stores in Winslow, Arizona. Claimant based his request for the leave of absence on the fact he was only able to work for Carrier a short period the year before, and hence, other employment might be important. The clerk who responded to his call informed him that no leave of absences were being granted to the people being recalled, and suggested that he talk to the Personnel Administrator. At the conclusion of the conversation, Mr. Joe indicated that he would be on hand at the appointed time on April 2nd.

Mr. Joe did not appear on April 2nd, and on April 3rd a letter was addressed to him, which provided as follows:

As a result of your failure to report within fifteen (15) calendar days after recall for assignment at Irvine, California, in accordance with Rule 4(c) and Appendix 20, Section 4, you are being removed from Group II, Class I System Steel Gang Seniority Roster with forfeiture of all seniority rights.

The most relevant rules relating to this matter are as follows:

"Rule 4(c) - Failing to Return to Service When Recalled. Employees failing to report to work when called without having satisfactory reason for not doing so will forfeit seniority in the class where recalled, as provided in Rule 2(c). When an employee forfeits seniority under this provision, he will be notified thereof, in writing, with a copy to the General Chairman. . . ."

"Rule 2(c) - Failure to meet any of the requirements as above specified, failure to report on the date indicated in the notification of recall, not to exceed fifteen (15) calendar days from date of notification of recall forwarded to the employee's last known address, without a satisfactory reason, will result in forfeiture of seniority in the class where recalled. When an employee forfeits seniority under this provision, he will be notified thereof, in writing, with a copy to the General Chairman."

Petitioner takes the position that since Claimant had only been allowed about six weeks of work in the preceding year, and had an opportunity to obtain full time employment on a permanent basis, it could hardly be argued that he did not have

a satisfactory reason for not reporting as instructed. The organization does not agree with Carrier's position that the reason for responding to the recall notice was not satisfactory under Rule 2(c).

Carrier takes the position that Claimant was properly notified of the recall, and his reason for failing to respond to the recall, was unsatisfactory. Carrier notes that under the current agreement, Claimant was required to report to work for a position which would be in existence for more than thirty days duration.

As the Board views it, the contractual rules cited above are clear and unambiguous and furthermore, are self-executing rules. An employee's failure to comply with provisions of those rules results in an automatic loss of seniority. There have been many similar disputes between these parties, as well as with other Carriers, relating to failure to report following a furlough. In this instance there is no justification for the position taken by Petitioner, and the Claim must be denied.

AWARD

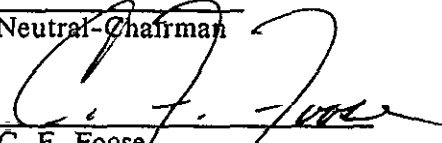
Claim denied.



I. M. Lieberman, Neutral-Chairman



L. L. Pope
Carrier Member



C. F. Foote
Employee Member

Chicago, Illinois
June 26, 1991