

PUBLIC LAW BOARD NO. 2774

Award No. 69
Case No. 106

PARTIES
TO
DISPUTE

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

STATEMENT
OF CLAIM

- "1. That the Carrier violated the agreement when it failed to recall Trackman G. L. Meister in seniority order on September 3, 1982, and instead called and assigned Junior Trackman to perform services rightfully belonging to claimant. In so doing, caused claimant loss of work and compensation connected therewith.
2. That the claimant now be allowed compensation at the rate applicable to the position of Trackman beginning September 13, 1982, up to and including November 15, 1982."

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 herein had been on layoff. On September 3, 1982, Carrier addressed a certified letter to claimant instructing him to report to service on September 13, 1982. The claimant did not report to work on that date or within the 15 days provided in Rule 2 of the Agreement. As a result, on October 28, 1982, claimant was notified that since he had not reported to work within the requirements of Rule 2, his name was removed from the seniority roster.

The evidence indicates that the original letter recalling claimant was never received by him and, indeed, was returned, since it was sent certified mail, to Carrier. The claimant indicates that the secretary in the Carrier's office stated that she made a mistake on his address and sent the letter of recall to his old address. Following a discussion between the Organization's General

Chairman and the Division Engineer, claimant was returned to his assigned position on November 16, 1982.

Carrier insists that claimant was properly notified of his recall by the September 3 letter. Thus, Carrier met its responsibility under the rules when it entrusted the notification to the U. S. Postal Service for delivery. For this reason, according to Carrier, claimant is not entitled to the pay for the period which he missed because of the non-delivery or acceptance of the letter. Petitioner on the other hand insists that Carrier made an error with respect to claimant's address and, furthermore, it is impossible to have considered claimant to be in violation of the rule since he never received the notification.

The Board notes that Rule 2, Section (c) of the agreement provides in pertinent part as follows:

"....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."

The Board is of the opinion that since there was no established notification of claimant in view of Carrier's statement that the letter in question was returned to the Carrier postmarked "Unclaimed", there could not have been the running of the 15 days provided in Rule 2, Section (c). Whether or not Carrier sent the letter of recall to the wrong address is a matter of dispute, but what is undisputed is the fact that there was never a receipt of the notification by claimant. Carrier has the burden of proof with respect to the receipt of such notification in order for the provisions of the applicable rule to be effective. In this instance, it is apparent that an error was made and the claim must be sustained.

AWARD

Claim sustained.

ORDER

Carrier will comply with the award herein within thirty (30) days from the date hereof

I. M. Lieberman, Neutral-Chairman

C. F. Foose, Employee Member

G. M. Garmon - Carrier Member

Chicago, Illinois

July 23, 1984