

PUBLIC LAW BOARD NO. 2774

Award No. 71
Case No. 108

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 provisions of the current agreement when on February 23, 1983, it removed Trackman R. D. Jiminez's name from the appropriate seniority roster and terminated his seniority and employment relationship with the Carrier, and in so doing, caused claimant loss of compensation rightfully belonging to him by virtue of his seniority rights under the current agreement.
2. That claimant R. D. Jiminez's name now be placed on the appropriate seniority roster and that his employment relationship and seniority be reinstated with compensation for all wage loss suffered and all seniority 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.

By letter dated January 28, 1983, the Carrier informed claimant, as well as a group of other employees, that they would be force reduced at the close of work on February 4, 1983. Carrier insisted that it never received the address of claimant within the fifteen days specified in Rule 2 of the agreement and, hence, subsequently on February 23, 1983, claimant received a letter indicating that he had been severed from the rolls since no recall address had been received from him. It is also noted that there were three other employees similarly dealt with with respect to the layoff letter of January 28.

The Organization insisted that claimant was wrongfully terminated because he had filed his address in the normal fashion in the mails on February 10, 1983, and that the U.S. Mail had misplaced or lost his letter. The Organization insists therefore that he should not be held responsible for the Postal Department's

mishandling and should not have been terminated.

Rule 2, Section (c), Paragraph 4, of the agreement provides in part as follows:

"Employees laid off in force reductions shall retain their seniority provided they (1) file their addresses in writing within fifteen (15) calendar days after being displaced; and (2) promptly report in writing any subsequent changes in their addresses...."

Carrier insists that February 19 was the fifteenth day following the furlough and no recall addresses were received from claimant and, therefore, claimant was properly cut off the seniority roster.

It is clear that the burden of establishing that the letter with the address was received by Carrier was with Petitioner. No proof is on the record in support of Petitioner's contention. The presumption that the letter was received because it was deposited in the U. S. Mail is a rebuttable presumption (Third Division Award 11505). Many awards in related disputes have been decided in this industry. With respect to this Carrier and Organization, Public Law Board No. 3308 in Award No. 19, held as follows:

"Carrier contends that claimant did not file his address in writing as required within fifteen (15) days of furlough and since this rule is self-executing, the claimant automatically lost his seniority.

We have reviewed the record in detail and find probative evidence to support Carrier's contention that the claimant failed to file his address, in writing, as required within fifteen (15) days of furlough.

Rule 2, Section (c), is self-executing. Such position has been upheld by numerous awards by various divisions of the National Railroad Adjustment Board. This Board can find no fault with such reasoning, therefore, we hold that the agreement was not violated."

The Board herein can find no basis for disagreeing with the reasoning expressed in the award cited above. Clearly claimant did not comply with the requirements of Rule 2 and, therefore, the claim must be denied.


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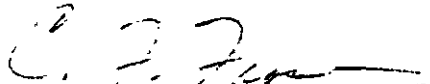
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AWARD


Claim denied.



I. M. Lieberman, Neutral-Chairman



C. F. Foose, Employee Member



G. M. Garmon, Carrier Member

Chicago, Illinois
July 23, 1984