

PUBLIC LAW BOARD NO. 2774

Award No. 76
Case No. 114

PARTIES
TO
DISPUTE

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

STATEMENT
OF CLAIM

- "1. That the removal of Trackman J. B. Lara's name from the seniority roster and termination of his seniority and employment relationship with the Carrier was without just and sufficient cause and in violation of the Agreement. In so doing, the Carrier has caused Claimant loss of compensation rightfully belonging to him by virtue of his seniority rights under the current agreement.
2. That Claimant J. B. Lara's name now be placed on the appropriate seniority roster and his employment relationship with seniority and all other rights be restored unimpaired and that he be compensated for all wage loss suffered during the intervening period."

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 upon his request, Claimant was granted a 30-day leave of absence, beginning November 1, 1982, due to the fact that his wife, who was living in Mexico, had a severe and serious medical¹ problem. On November 23, 1982, in view of the fact that his wife's condition had not improved, Claimant contacted the Division Engineer's office by telephone, requesting that his leave be extended. He was advised by the Payroll Clerk, to whom he spoke, that permission for additional leave of absence was not necessary due to the fact that he had been placed in an off-in-force reduction status effective November 18, 1982. Apparently, the Claimant accepted the Clerk's advice and continued his stay in Mexico, caring for his wife. On January 3, 1983, a certified letter was addressed to Claimant informing him that his name had been removed from the seniority roster effective December 3,

1982, as a result of his failure to file his address within 15 calendar days after being displaced. Claimant had no knowledge of any of these facts until approximately May 1, 1983.

As an additional position, Carrier maintains that the claim was not timely filed since, under the provisions of Rule 14 of the Agreement, a claim must be presented within 60 days from the date of the occurrence upon which the claim is based. In this instance, the filing was clearly beyond the period. In addition, without in any fashion prejudicing this position, the Carrier maintains further that Claimant's failure to comply with the provisions of Rule 2, Section (c), in terms of a written address within the prescribed time limit, was sufficient to justify Carrier's action. In support of this position, Carrier points out that Claimant was well aware of his responsibilities under that particular rule since he had been involved in force reductions on five prior occasions, and on each occasion filed his address.

Petitioner maintains initially that Claimant was obviously foreclosed from initiating a claim until such time as his dismissal became known to him, which was shortly before the claim herein was filed. Hence, the Organization insists that the claim was not untimely as Carrier contends. Furthermore, Petitioner argues that Claimant had been granted a leave of absence and was led to believe that his leave of absence had been extended by virtue of his position being abolished. In accordance with Rule 5, according to the Organization, Claimant could have returned to his former position on December 1, unless it had been abolished, in which case he would have been granted 7 days to seek out a junior employee to displace. If, at the expiration of that 7 calendar day period, it became known that he was unable to place himself, he could exercise his seniority as if cut off in a force reduction in the manner provided for in Rule 3, Section (c). For these reasons, the filing of the recall address would have begun to toll on December 1, 1982, according to the Organization, and, hence, Claimant could not be subject to dismissal on December 3, as was set forth in the Division Engineer's letter dated January 3. In that letter, the Organization notes, the Division Engineer stated that Claimant's name was being removed from the roster "effective December 3, 1982, for failure to file your address in writing within fifteen (15) calendar days after being displaced." In short, the Organization argues that Claimant was dismissed twelve days prior to December 15, which would have been the fifteen day subsequent to the expiration of his leave of absence.

The circumstances surrounding this termination of seniority are rather unusual. First, it is apparent that Claimant, while being on leave of absence, was furloughed, and he found out about this in a telephone call in which he was attempting to extend his leave. His preoccupation with personal problems was apparent and understandable at that time. On the other hand, it is also apparent that Claimant, due to his prior experience, was well aware of the requirement that he furnish his address within fifteen days after being reduced and furloughed. In this instance, for reasons which are neither clear nor apparent (except for his personal problems and lack of adequate English), he failed to comply.

- Under the unusual circumstances in this matter, it is apparent that Claimant's seniority should be restored and he should be permitted to obtain employment with Carrier in accordance with that seniority. However, in view of his failure to comply with the appropriate rule, he will not be compensated for time lost. The applicability of the rules under the particular circumstances must be considered carefully by Carrier in order to be at least reasonable in their implementation. The Board also concludes that the Claim was timely filed in view of Claimant having no information about his status until on or about May 1.

AWARD

Claim sustained in part. Claimant will be returned to his former position as his seniority indicates, but will not be compensated for time lost. His seniority will be restored unimpaired.

ORDER

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



I. M. Lieberman, Neutral-Chairman



C. F. Foote, Employee Member



G. M. Garmon, Carrier Member

Chicago, Illinois

March 8, 1984