

PUBLIC LAW BOARD NO. 3308

Award No. 13

Case No. 13

**PARTIES
TO
DISPUTE**

Brotherhood of Maintenance of Way Employees

The Atchison, Topeka and Santa Fe Railway Company

**STATEMENT
OF CLAIM**

"Claim that former Illinois Division Trackman L. W. Jennings be reinstated to service with seniority, vacation, all benefit rights unimpaired and paid for wage loss and/or otherwise made whole, account the claimant's name being improperly removed from the seniority roster for failure to file his address after being force reduced."

FINDINGS

Upon the whole record, the Board finds that the parties herein are Carrier and Employee 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 Claimant was furloughed November 27, 1981. The issue now before this Board involves the Claimant's alleged failure to file his address at the time of his furlough in accordance with the provisions of Rule 2, Section (c), which reads, in part, as follows:

"Employees laid off in force reduction shall retain their seniority provided they (1) file their address in writing within fifteen (15) calendar days after being displaced; and (2) promptly report in writing any subsequent changes in their address. The reporting required herein must be addressed to the Division Engineer."

The Organization maintains that Claimant filed his address in accordance with the provision of Rule 2, Section (c), on December 4, 1981, which was within the prescribed time limit.

The Carrier contends that the notice dated December 4, 1981, was never received, therefore, Claimant did not file his address as required within fifteen (15) calendar days as required and since the rule is self-executing, the Claimant automatically lost his seniority.

Throughout the investigation of this claim on the property the issue remained in dispute; i.e., whether or not Claimant actually filed his address as required.

Thus, there are disputed facts which were not resolved by evidence developed on the property, and which this Board is, therefore, unable to resolve. Numerous awards of various Divisions of the National Railroad Adjustment Board have consistently held that when such conflicts in evidence arise in essential aspects of a claim, there is no alternative but to dismiss the claim. Accordingly, since we cannot properly decide the merits of this claim without resolving the issue, we have no choice but to dismiss the claim.

AWARD Claim dismissed.

Clarence H. Harrington
Clarence H. Harrington
Neutral Member

J. E. F. Armitage
Organization Member

M. J. Carmon
Carrier Member

Dated at Chicago, Illinois
March 1, 1983