

PUBLIC LAW BOARD NO. 3308

Award No. 15
Case No. 15

PARTIES Brotherhood of Maintenance of Way Employees
TO
DISPUTE The Atchison, Topeka and Santa Fe Railway Company

STATEMENT
OF CLAIM

"Claim that Valley Division Trackman J. P. Rodriguez be reinstated as a Miscellaneous Machine Operator and compensated for the difference between the Trackman's rate and the Burrow Crane Operator's rate, account improperly disqualified as a Miscellaneous Machine Operator following investigation held on December 5, 1980."

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.

Claimant was employed by the Carrier as a miscellaneous machine operator. While Claimant was operating Burro Crane AT-749 on November 1, 1980, it turned over causing extensive damage to the crane and Claimant sustaining a personal injury. Claimant was charged for violation of Rules A, L and 1056 of "Rules Maintenance of Way Structures", and Rule 224, "Safety Rules for Santa Fe Employees", reading as follows:

"Rule A: Safety is of the first importance in the discharge of duty."

"Rule L: Employees must observe the condition of equipment and the tools used in performing their duties. Defective tools must be put in safe condition before they are used, and

employees should report defective tools and equipment. Equipment and tools must be returned to their proper place after use. A report must be made promptly of missing equipment or tools."

"Rule 1056, Roadway Machine Operators. Responsibility. They will be held responsible for the safety, care, maintenance and performance of the machines to which they are assigned. A wire report will be made promptly to the proper authority when a machine is out of service or not performing properly.

They will be governed by instructions of motor car maintainers regarding the maintenance and operation of machines.

Upon taking over a machine and again upon completing assignment, they will render to the general foreman, roadmaster or signal supervisor under whom they may be working, a report of the condition of the machine; also listing the small tools and repair parts on hand. Operating manuals and parts books will also be listed. Copies of all reports shall be made to division engineer and supervisor of work equipment."

"Rule 224: Crane or hoist operator must never lift nor drop a load with a sudden jerk; all handling must be steady."

Following formal investigation held on December 5, 1980, Claimant was disqualified as a miscellaneous machine operator.

We have carefully reviewed in detail the transcript of the Hearing held in this matter and find sufficient evidence of probative value was presented to support the charges.

We do not find that Carrier's penalty of disqualification was excessive or too severe, especially in view of the fact Claimant had received discipline, some seven months prior to this incident,

for the mishandling of a Burro Crane. We will not disturb the discipline. We find that the Agreement was not violated.

AWARD Claim denied.

McParnon
Carrier Member

Clarence H. Herrington
Clarence H. Herrington
Neutral Member
S. E. Fleming
Organization Member

Dated at Chicago, Illinois
March 1, 1983

PUBLIC LAW BOARD NO. 3308

Award No. 16
Case No. 17

PARTIES Brotherhood of Maintenance of Way Employees
TO
DISPUTE The Atchafalpa, Topeka and Santa Fe Railway Company

STATEMENT
OF CLAIM

"Claim for reinstatement of former Trackman M. S. Carrington, Middle Division, 'with his correct seniority, vacation, all other benefit rights unimpaired and compensated for all wage loss and/or otherwise made whole beginning May 10, 1982.' account the claimant's name being improperly removed from the seniority roster for failure to respond to recall."

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 a furloughed employee subject to recall to service. In a letter dated April 23, 1982, Claimant was recalled to service, effective May 10, 1982. He was also instructed to contact the Carrier on either May 6 or May 7, 1982 for his assignment. On May 9, 1982, Claimant contacted the Carrier and advised he could not report on May 10, 1982. The Carrier gave him permission not to report on May 10, 1982, but he was expected to report on May 11, 1982. Claimant did not respond to recall on May 11, 1982 as directed. In a letter dated May 12, 1982, Carrier advised Claimant that his name was being removed from the seniority roster in accordance with the provisions of Rule 2, Section (c) of the Agreement.

The pertinent part of Rule 2, Section (c) reads as follows:

"~~xxxx~~ 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."

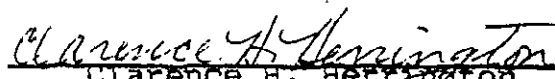
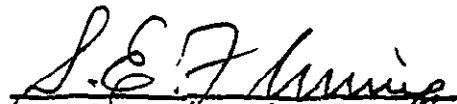
The Organization contends that Claimant was discharged without the benefit of a formal investigation in violation of Rule 13-DISCIPLINE.

Rule 2, Section (c) is self-executing and provides that failure to respond in timely fashion results in an employee being considered resigned. Our conclusion that the rule is self-executing and provides for an automatic loss of seniority is consistent with numerous awards of various Divisions of the National Railroad Adjustment Board. This type of self-executing rule is not within the contemplation of Rule 13.

We have reviewed this record in detail and find no probative evidence to show Claimant complied with the mandatory provisions of Rule 2, Section (c). Therefore, Carrier did not violate the Agreement.

AWARD Claim denied.


Carrier Member


Clarence H. Harrington
Neutral Member

Organization Member

Dated at Chicago, Illinois
March 1, 1983