

PUBLIC LAW BOARD NO. 4023

Case No. 1
Award No. 1

CARRIER FILE: PR-013 - P. G. Walker
ORGANIZATION FILE: None

PARTIES TO DISPUTE UNITED TRANSPORTATION UNION - C&T
vs.
UNION PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM Request of the Organization for the reinstatement of former Brakeman P. G. Walker to the service of the Union Pacific Railroad Company with all rights unimpaired and pay for time lost.

FINDINGS: Upon the whole record and all the evidence, after hearing, 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 by Agreement under Public Law 89-456 and has jurisdiction of the parties and subject matter.

Claimant began service with Carrier in 1967 as a switchman/brakeman. In 1968, he was promoted to yardmaster and worked at that position until 1975, when he was promoted to Terminal Trainmaster at Ogden. In 1978, he was transferred to Los Angeles, and in 1981 he was appointed Manager of Harbor Operations for the Los Angeles and Long Beach Harbors. As Trainmaster and Manager of Harbor Operations, he was not part of a collective bargaining unit or covered by a collective bargaining agreement; he was a management official.

In late 1984, Carrier received information that Claimant had been involved in the sale of Carrier material to a third party as scrap, and in pocketing some or all of the proceeds, which amounted to more than \$50,000.00. After an investigation by the Los Angeles Police Department and its own Special Services Department confirmed the information, Carrier confronted Claimant with the facts and dismissed him on February 15, 1985. Claimant was eventually indicted and pleaded guilty to various felony counts connected with the illegal sales, according to information obtained by Carrier from official sources; the actual court records were not available because the trial of Claimant's co-defendant in the matter had not yet been completed at the time this matter was argued to the Board.

Rule 81(f) of the Schedule Agreement applicable to brakemen/switchmen provides:

"An employe accepting an official position representing the Company or its train service employes, will retain his seniority as per schedule. If such employe fails to perform the duties of the position in a satisfactory manner, or in the event he desires to return to his seniority district, he will take the same seniority rights as he enjoyed at the time of his promotion, provided he returns to service as an employe under this agreement within 90 days from date he leaves the official position representing the Company or its train service employes."

On March 16, 1985, Claimant attempted to mark up for service under Rule 81(f) at Los Angeles. Carrier withheld him from service and sent him a Notice of Investigation and Hearing under Schedule Rule 109 of the brakeman/switchman agreement, charging him with the offenses for which he had already been dismissed from his position as Director of Harbor Operations. The investigation consumed three days of testimony on March 22-24, 1985. Carrier concluded that the charges had been sustained and dismissed him again on April 1, 1985.

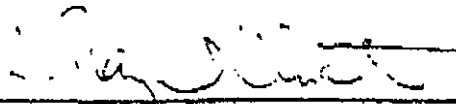
The Organization raises various procedural and substantive objections to the investigation and resulting dismissal; however, in view of our disposition of the claim, we find it unnecessary to recite or consider those objections or the arguments offered in support of them.

In our opinion, Claimant had no right to mark up for service or exercise seniority in any way under Article 81(f). That article preserves seniority of an employe promoted to an official position in two specific circumstances - if he fails to perform the duties of the position in a satisfactory manner or if he voluntarily wishes to leave the position and return to his seniority district. Being discharged because of theft does not meet either of the conditions. To stretch the meaning of "fails to perform the duties of the position in a satisfactory manner" to include discharge for theft would be to go far beyond either the words themselves or the obvious intention of 81(f) to give an employe who attempts to work at an official position but does not have the competence to perform the work or doesn't like it, an opportunity to go back to his former job.

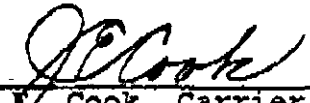
Thus, Carrier had no obligation to permit Claimant to exercise his seniority or to afford him the coverage and procedures of Rule 109 providing for formal investigation before dismissal. Claimant was dismissed as an official for theft. He

was not covered by the agreement. Whatever rights he had were rights as an official only, not as a brakeman/switchman. He had no right to exercise seniority under 81(f). Carrier should not have held an investigation under Article 109. But the fact that it mistakenly did so did not give Claimant rights to object either procedurally or substantively to an investigation to which he was not entitled. There is no basis for his claim under the agreement and it will therefore be denied.

AWARD: Claim denied.


H. Raymond Eluster, Chairman


J. L. Easley, Employee Member


J. E. Cook, Carrier Member

Salt Lake City, Utah
January 28, 1988