

PUBLIC LAW BOARD NUMBER 4138

Award Number: 6

Case Number: 6

PARTIES TO DISPUTE

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

CSX TRANSPORTATION INC.

STATEMENT OF CLAIM

1. Claimant R. M. Lee be allowed to return to work with all seniority on the W&A seniority district that he would have acquired had he not been pulled out of service on May 15, 1986. Also, be paid for all time that he would have been able to work in accordance with his seniority.
2. R. Goettie be allowed to return to work with all seniority on the W&A seniority district that he would have acquired had he not been pulled out of service on May 13, 1985. Also, be paid for all time that he would have been able to work in accordance with his seniority.
3. R. T. Eason be allowed to return to work with all seniority on the W&A seniority district that he would have acquired had he not been pulled out of service on May 13, 1985. Also, be paid for all time that he would have been able to work in accordance with his seniority.

FINDINGS

On March 29, 1985, the above-named Claimants were furloughed from Carrier's Mechanical Department at Waycross, Georgia. The Claimants applied for re-employment and were re-hired as Track Repairmen on Rail Gang 6N09, headquartered in Chattanooga, Tennessee in April 1985. Claimants Goettie and Eason were notified on May 13, 1985 that their applications for re-employment had been rejected due to unsatisfactory work performance. Claimant Lee was informed on June 3, 1985 that his application had also been

rejected for the same reason. The Organization filed claims on behalf of the Claimants on June 10 and June 18, 1985, seeking their reinstatement to service on the basis that Carrier rejected improperly their application without affording them the opportunity of an investigation. The claims were denied by Carrier on the grounds that the Claimants had no right to a hearing since their applications were rejected during their probationary period.

The issue to be decided in this dispute is whether Carrier violated the Agreement by removing the Claimants from service without affording them the opportunity for a hearing concerning their removal.

The position of the Organization is that Carrier violated Rule 27 of the Agreement by failing to provide the Claimants with a hearing following their removal. The Organization contends that the Claimants should not have had to go through the probationary period once their applications for re-employment were accepted, since their previous assignments came under the same road and organization. The Organization therefore contends that the Claimants should not have been subjected to the probationary period and accordingly were entitled to a hearing concerning their removal.

Carrier contends that once the Claimants were furloughed and subsequently applied for re-employment, they lost all prior seniority rights held under the Agreement. Carrier maintains that the Claimants were told when re-applying for employment as Track Repairmen that they would be subject to the 60-day probationary period like any new employee. Carrier further

maintains that since the Claimants were removed during the probationary period, they had no right to an investigation concerning their removal. Carrier cites Article XI, Section 1 covering "probationary period" to establish that only written confirmation of an applicant's rejection is required. Carrier contends that the Claimants were removed for poor job performance and were so informed; and that no further explanation was required under the probationary period rule.

Finally, Carrier maintains that no hearing was required under the discipline provisions of the Agreement, since the Claimants were never "disciplined" by Carrier, but rather merely removed during their probationary period. Carrier cites the fact that all three Claimants still held seniority in the Carman's craft as evidence that they were not "disciplined" within the meaning contemplated in the Agreement.

After review of the record, the Board finds that the Organization's claim must be denied.

The evidence of record establishes that the Claimants were furloughed in March 1985 and subsequently applied for re-employment in April 1985 as Track Repairmen. Having re-applied, the Claimants were aware of the fact that they would be subject to a probationary period pursuant to Section 1 of Article XI. The probationary period provision only requires Carrier to give a written explanation for rejection of an applicant. It does not require that Carrier afford the applicant a hearing. The only other basis upon which the Claimants could claim a right to investigation would be if

disciplinary action had been taken by Carrier. However, there is no evidence that any disciplinary action was taken by Carrier. To the contrary, the Claimants' status as Carmen remained unaffected by Carrier's actions. Carrier merely rejected the Claimants' applications for re-employment during the probationary period. Absent evidence of bad faith or abuse of discretion, we cannot find that Carrier acted improperly in removing the Claimants during that period. Accordingly, we find no support in the Agreement for the Organization's position that a hearing was required.

AWARD

Claim denied.

Nicholas Pumas
Neutral Member

L. Womble
Carrier Member

Bryce L. Hall, et al dissent,
Organization Member

DATE: February 1, 1988