

AWARD NO. 1
CASE NO. 1

PUBLIC LAW BOARD NO. 4604

PARTIES)
TO)
DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
) CSX TRANSPORTATION, INC.

STATEMENT OF CLAIM

Claimant Silas Cole, ID 182744, who had 35 years seniority be re-instated and paid for each work day from March 22, 1988 and continuous until claimant is allowed to return to service for CSX (Former L&N) Railroad.

OPINION OF BOARD

Claimant is a crane operator with a seniority date of September 22, 1952. Due to a force reduction, Claimant was displaced by a senior employee on October 12, 1987. The Organization asserts that by letter dated October 21, 1987, Claimant notified Division Engineer Dobbs as follows:

I was misplaced off crane 10-12-1987 and I would like to file my senyorty [sic] date 9-22-1952. I will be off longer than 10 days. IDNT #182744

Yours truly

Silas Cole

In support of the Organization's argument, a carbon copy of the above letter has been presented.

The Carrier asserts that it never received the above letter and Claimant simply disappeared from the Carrier's contact. On March 4, 1988, Division Engineer Dobbs wrote Claimant stating:

This is to advise you that your name is being removed from the MofW Cincinnati Sub-division Seniority Roster in accordance with Rule 21(c) and 21(g) of the MofW Employees' Agreement.

Records indicate that you were displaced from Burro Crane, Gang 6C31 on October 12, 1987, and you did not exercise your displacement rights, nor did you file your name and address, in writing, within 10 days in order to retain your seniority.

On March 22, 1988, Claimant sought to exercise his seniority and displace a junior employee. The Carrier refused to permit the displacement. This claim seeks reinstatement and compensation from March 22, 1988.

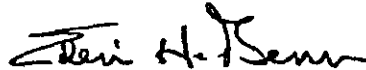
As it applies to this case, Rule 21 is a self-executing rule. Failure by employees to exercise their displacement rights under Rule 21(c) or file their address under Rule 21(g) within the specified time limits of the rule results in a loss of seniority. Aside from its position that it never received the letter, the Carrier bases its argument that Claimant did not comply with Rule 21 in light of alleged similar prior experiences with Claimant. The Organization counters that assertion disputing those prior occurrences with the further contention that the Carrier has had difficulties with losing documents.

We are satisfied that the parties' positions in this matter are advanced in their respective good faith beliefs of the veracity of the facts they argue. Under the circumstances of this case, we are satisfied that Claimant attempted to comply with Rule 21. By the same token, we are satisfied that the Carrier did not receive the letter. Although the details of the alleged prior difficulties the Carrier had with Claimant are not necessary for discussion and the merits of those circumstances are not material for this case, the fact that Claimant had prior difficulties should have caused Claimant to be more cautious than he was in providing the notice. We are also mindful of Claimant's lengthy seniority. Considering all of the above, we shall return Claimant to service with seniority unimpaired but without compensation for time lost. Claimant is cautioned, however, that our requiring his reinstatement in this matter is with the admonition that establishment of future timely notifications under Rule 21 by him will require more than a mere assertion that he acted in a timely fashion. In the future, we will have little recourse if Claimant fails to make certain through verification that he acted in a timely fashion where so required by the Agreement.

AWARD

Claim sustained in part. Claimant shall be returned to service with seniority

unimpaired but without compensation for time lost.


Edwin H. Bern
Neutral Member


L. Womble
Carrier Member


B. Hall
Organization Member

Jacksonville, Florida
February 24, 1989