

AWARD NO. 31

Case No. 31

PUBLIC LAW BOARD NO. 4823

PARTIES) THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
TO) versus
DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

STATEMENT OF CLAIM:

"Carrier's decision to terminate the seniority and employment of former Valley Division Foreman J. C. Dahlke, effective June 12, 1990, was unjust.

Accordingly, Carrier should now be required to reinstate the claimant to service with his seniority rights unimpaired and compensate him for all wages lost from June 12, 1990 (11-960-60-42/190-13A1-90310)."

FINDINGS:

This Public Law Board No. 4823 finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction.

On June 12, 1990, Carrier's Division Manager wrote the claimant a certified letter, return receipt requested, notifying him of the termination of his seniority and employment due to his failure to exercise displacement rights under Rule 3(c).

On December 11, 1990, the General Chairman wrote Carrier's highest officer of appeal (Mr. Broxterman), in pertinent part, as follows:

"We present for your consideration a Claim in behalf of Former Valley Division Seniority District Track Foreman, J. C. Dahlke (Seniority Date 4-11-77), for reinstatement to his former position with Seniority, Vacation and all other benefit rights restored and compensated for all wage loss beginning June 12, 1990 and continuing forward until Claimant is restored to his former position.

On June 12, 1990, Division Manager T. H. Shalin, advised the Claimant by letter that his Seniority and Employment were terminated account of failing to exercise his displacement rights under Rule 3 (c).

"We cannot agree with the Division Manager's decision to terminate the Claimant's Seniority and Employment under Rule 3 (c), since he was on Temporary Leave and was unaware that his position had either been abolished, and or he was displaced by a Senior Employee. The Claimant had requested a Leave of Absence in conjunction with his vacation in April of 1990, which was apparently not made part of his record, thus his Employment was terminated without the right to challenge the Division Manager's decision. Even if the Carrier could produce evidence that the Claimant failed to displace as set forth in Rule 3 (c) (which they did not). The discipline issued is excessive in proportion to the alleged violation of the Agreement between the Carrier and the Organization. We cannot agree that the Carrier complied with Rule 13 or Appendix No. 11 as amended July 16, 1984."

On January 4, 1991, Mr. Broxterman replied to the General Chairman's aforementioned letter, in pertinent part, as follows:

"Your claim is improper and barred under the provision of Rule 14 for the reason it was not presented in the first instance to Regional Manager Shalin within 60 days from the date of the occurrence on which the claim is based. The claim is based on the action taken in Mr. Shalin's letter to Claimant Dahlke dated June 12, 1990. Approximately 182 days had elapsed from the date of Mr. Shalin's letter (June 12) to the date your claim was initially and improperly submitted to this office (December 11, 1990) which is well beyond the time limit.

Without prejudice to the foregoing, according to the information furnished me, Claimant Dahlke observed his vacation from April 30 through May 18, 1990. On May 3, 1990 (while the claimant was on vacation), he was displaced from his foreman's position by a senior employee who exercised displacement rights under the agreement. On Friday, May 18, 1990, the claimant was advised of the displacement and that he, in turn, would have to exercise his seniority by making a displacement. Claimant requested and was granted a 10 day leave of absent (sic.) which was handled verbally. He was advised that the leave of absence would expired (sic.) on May 31, 1990, on which day he should get in touch with the office to make his displacement. Claimant did not call the office after his leave of absence expired; nor did he exercise his seniority by making a displacement. In fact, to this day, the claimant has not been in touch with the Carrier.

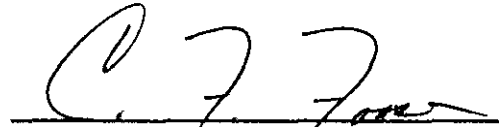
Rule 3-(c) of the agreement is a clear, unambiguous and self-executing rule. An employee's failure to comply therewith provides for an automatic loss of seniority.


"Numerous awards of the NRAB as well as PLB awards on this property support the Carrier's position."

It is not necessary for the Board to address the Carrier's contentions as to the alleged violations of the Time Limit Rule, inasmuch as the Board finds, based on the evidence before it, that the claimant's seniority and employment were properly terminated under the provisions of Rule 2(c).

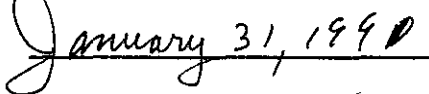
AWARD: Claim denied.


G. Michael Garmon, Chairman


Employee Member


Carrier Member

Dated at Chicago, IL:


January 31, 1990