

PUBLIC LAW BOARD NO. 76

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

vs.

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

Roy R. Ray, Referee

STATEMENT OF CLAIM:

1. The Carrier violated the effective agreement by failing to restore Section Laborer Benito Borjas to his position as laborer in the Maintenance of Way Forces at Baden Yards, St. Louis, Missouri, October 1966.

2. The Carrier further violated the effective Agreement by failing to pay Track Laborer Benito Borjas his vacation allowance earned by him by reason of services rendered in 1966.

3. The Carrier shall now restore Track Laborer Benito Borjas to his position as Track Laborer in the M of W Department at St. Louis and pay him for all time lost minus what he may have earned in other occupations and with full seniority rights.

4. The Carrier shall now reimburse Track Laborer Benito Borjas for the vacation pay due him because of the violation of the Agreement referred to in Part 2 of this claim.

OPINION OF BOARD: Claimant Benito Borjas was regularly assigned to Track Laborer at Carrier's Baden Yard in St. Louis, Mo., until September 26, 1966. On this date he was offered a job as a carman in the Mechanical Department. He asked his foreman in the Track Department, Glen Doyle, for permission to transfer to the Mechanical Department. Doyle released claimant and he took the carman job on September 26th. After working there for several days (through October 1) he became dissatisfied with the work and asked Track Foreman Doyle to be allowed to return to his former position as Track Laborer. Foreman Doyle denied the request. On October 2nd Borjas asked General Chairman Jones to help him get back

his old job in the Track Department. Jones wrote Doyle about the matter asserting that Borjas had been given a leave of absence by Doyle to try out the car job, and requesting that he be permitted to return to the track job. Doyle (who incidentally was then the Local Chairman of the Organization) replied, denying that he had ever agreed that Borjas could have a leave of absence to try the car job. He also stated that when Car Foreman Stephenson and Borjas came to him requesting that he release Borjas he agreed to do so but stated to Borjas at the time that if he took the car job he would lose all his seniority on the track job.

Borjas continued to work as a carman through October 7, 1966, when he quit that job. (Form 1846 executed by Foreman Stephenson of the Mechanical Department on October 11, 1966, states "Did not want to accept responsibility of Car Inspector and resigned"). On October 10th he again contacted Foreman Doyle and repeated his request to be allowed to return to the Track Laborer position. Doyle refused his request.

The Organization contends that when Doyle agreed to Borjas' transfer to the Mechanical Department he granted him a leave of absence to try out the carman job and that Article 7, Rule 4 (Leave of Absence) applies. In this connection it argues that since the absence was for less than ten days verbal permission sufficed. It asserts that since Borjas had a leave of absence he was entitled on proper notice to return to the track job; and that Doyle's refusal to permit his return was in effect a dismissal from service.

The Carrier takes the position that Borjas was never granted any leave of absence and that when he transferred to the Mechanical Department he voluntarily severed his connection with the Track Department

and gave up his seniority there; and that when he quit the Carman job he resigned from the service of the Company.

The crucial issue thus presented is whether Borjas was granted a leave of absence to assume the job of carman on a trial basis with the understanding that if he did not like it he could return to the track job. After a careful review of the entire record we are convinced that no such leave was granted. Foreman Doyle's letter which was presented in evidence by the Organization specifically refutes any such understanding. Furthermore, the Form 1846 (also introduced by the Organization) prepared and signed by Foreman Doyle on September 26, 1966, merely states under the heading of Remarks, "Transferred from Maintenance to Mechanical Department." Since this contains no qualifying language it must be accepted as an actual transfer. Another Form 1846 filled out and signed by Foreman Stephenson of the Mechanical Department on September 26th states, "Transferred from Maintenance of Way Department."

We hold, therefore, that Borjas had no contractual right to return to service as a Track Laborer on October 3rd or later, and consequently that Doyle's refusal to allow him to return cannot under the circumstances be considered as a dismissal from service. From September 26 until October 10, Borjas was a carman in the Mechanical Department and when he resigned that position he voluntarily terminated his employment with Carrier. His request for reinstatement and pay for time lost must therefore be rejected.

This leaves the question of vacation pay. Article 26, Section 1 of the Agreement provides that if an employee worked a sufficient number of days in any calendar year he qualifies for a vacation in the

following year (assuming that he remains in Carrier's service).

Section 8 of the same Article states that where an employee has qualified under Section 1 for a vacation and his "employment status is terminated for any reason whatsoever including.... retirement, resignation, discharge ... he shall at the time of such termination be granted full vacation pay earned up to the time he leaves the service."

The Organization has asserted and carrier has not denied that Borjas worked a sufficient number of days in 1966 to qualify for a two-week vacation in 1967. We have held that he voluntarily quit the Carrier's service on October 11, 1966. On November 8, 1966, the General Chairman made a request that Borjas be given his vacation pay. This was certainly within the 60 day period. Carrier has not contended that the claim is barred by time limits. Thus, even though Borjas' termination from the Company service was by resignation we conclude that he is entitled to receive pay for whatever vacation he had earned up to that time.

AWARD

The claim is denied as to items 1 and 3. Claimant is not entitled to reinstatement or back pay.

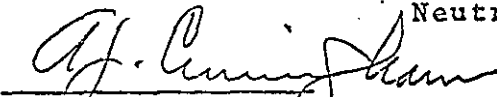
The claim is sustained as to items 2 and 4. Carrier is directed to pay claimant a sum equal to two weeks pay in lieu of vacation.

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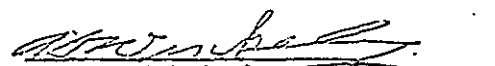


Roy R. Ray

Neutral Member and Chairman



A. J. Cunningham
Employee Member



A. E. Winkel
Carrier Member

Dallas, Texas
June 19, 1968