Award No. 4
Case No. 5

PUBLIC LAW BOARD NO. 2267

PARTIES TO DISPUTE: Brotherhood of Maintenance of Way Employes

and

Union Pacific Railroad Company

STATEMENT OF CLAIM:

1. That the Carrier violated the applicable Agreement when they improperly terminated the services of the following employes as indicated:

   a. C. V. Medina, Extra Gang Laborer, California Division, terminated March 29, 1977.

   b. F. R. Medina, Extra Gang Laborer, California Division, terminated March 29, 1977.

   c. F. J. Stone, B&B Carpenter, California Division, terminated April 25, 1977.

   d. D. S. Holland, B&B Carpenter, California Division, terminated June 13, 1977.

2. That the employes identified in Part 1 of this claim be reinstated to their former positions with seniority and all other rights unimpaired and additionally be compensated for loss of earnings suffered account the Carrier's improper action.

FINDINGS: The four Grievants, Messrs. C. V. Medina, F. R. Medina, F.J. Stone, and D. S. Holland, were on furlough and failed to respond to formal recall letter within the specified seven-day period of Rule 23(a) of Agreement. The Carrier contends that each of the Grievants had voluntarily forfeited his seniority rights, and in the Carrier's view, none of the Grievants came forth with a "satisfactory reason for failing to report" as provided in Rule 23(a). This rule reads:

> "(a) When forces are increased, or when a vacancy is to be filled, senior employes will be given preference on positions in the groups in which they hold seniority. Furloughed employes, or employes working in a lower class, who desire to avail themselves of the provisions of this rule must file their address in writing with the foreman or supervisor notifying them of the reduction, advising promptly of any change. An employe who is recalled to a bulletined

position or to a position anticipated to be of at least 30 days duration in a classification excluded from bulletining procedure in Rule 20 and who fails to report to such position within seven days after being notified by mail or telegraph sent to the last address given, or give a satisfactory reason for not doing so, will forfeit his seniority in such class and all lower classes of groups in which he holds seniority. Satisfactory reason for failing to report within seven days after being notified has reference to sickness or other reasons over which the employe has no control."

a. C. V. Medina:

Grievant C. V. Medina was in a furloughed status and was sent a formal recall letter dated March 14, 1977, instructing him to "report for work at the Roadmasters Office, East Yard at 7:00 AM" for service as Extra Gang Laborer on Extra Gang 5907, on March 21, 1977. This notice was by Certified Mail, Return Receipt Requested, and also stated: "Failure to report for recall will terminate you from the roster." (Carrier's Exhibit "A", p. 1). The Postal Service Form 3811 carries the notation that the letter was undeliverable because the addressee had moved and left no forwarding address. The unopened envelope was returned to the Carrier. (Carrier's Exhibit "A", p. 2). The record fails to provide evidence of reasons why Grievant C. V. Medina did not report for work on recall other than that he did not receive the recall letter of March 14, 1977.

b. F. R. Medina:

Grievant F. R. Medina was in a furloughed status and was sent a formal recall letter dated March 14, 1977 with the same content as C. V. Medina's. F. R. Medina's letter was addressed to 563 So. Gless Street, Apt. 82, Los Angeles, CA 90033, Certified Mail, Return Receipt Requested. According to the Roadmaster, the letter was sent to Grievant's last address of record. Grievant failed to report for service, and on March 29, 1977, Grievant was informed of his removal from service. (Carrier's Exhibits "J" and "K"). The March 29, 1977 letter was addressed to 570 S. Gless Street, Apt. 28, Los Angeles, California 90033. The Employe's Submission shows Exhibit of Carrier addressing Grievant's Wage & Tax Statement to the 570 S. Gless Street, Apt. 28 address for 1976. According to Grievant, the 570 S. Gless Street address was his current and most recent address after he changed his address from 563 So. Gless Street. The evidence of record supports the finding that the Carrier missent the formal recall letter of March 14, 1977 to the wrong address after receiving the correct address from Grievant. Under the circumstances, there appears to be no factual support for the Carrier's determination of voluntary forfeiture of Grievant's seniority.

c. F. J. Stone:

Grievant F. J. Stone, a B&B Carpenter, was in a furloughed status and was sent a formal recall letter, certified mail, under date of April 25, 1977, addressed to 413 N. 15th, Apt. 7, Las Vegas, Nevada 89101. (Carrier's Exhibit "S", page 2). The letter was subsequently returned to the Carrier by the Post Office Department, marked "Unknown", with two notices relative to delivery, one on April 29 and the second on May 4, 1977. The Organization, in letter of June 24, 1977 (Carrier's Exhibit "T"), states that "Mr. Stone thought he was making himself available for service by contacting his previous Foreman, Mr. James D. Miles at least twice a month asking when he could go back to work. Mr. Miles gave him no information on restoration of force." On May 31, 1977, Grievant sent to Mr. D. T. Reeder, Supervisor, B&B, a letter confirming their coversation of May 23, 1977, and supplying his address correction, with present address, and stating his availability for recall upon the first opening. Grievant's conversations with Mr. Miles cannot over-ride the written Agreement between the Parties.

d. D. S. Holland:

Grievant D. S. Holland, a B&B Carpenter, was in a furloughed status, and he was sent a formal recall letter, Certified Mail, to his last known address 2800 Lamb Street, Apt. # 161, Las Vegas, NV 89109, on June 7, 1977, instructing that he report for duty on June 13, 1977. Grievant was working on a job which involved travel on a day to day basis from one race track to another in the Southwest section of the country. Under the conditions of his employment, he alleges, there was no possible way whereby he could keep the Carrier posted as to his whereabouts on a day to day basis. Instead, he retained his residence and mailing address at 2800 Lamb Street, Apt. 61, Las Vegas, Nevada 89109, and arranged to have his mail monitored, particularly for the purpose of receiving a Notice of Recall to the Carrier's service. Grievant was immediately advised of the arrival of the recall letter on June 7, 1977, promptly quit his employment, proceeded to Las Vegas, picked up the letter from the Post Office on June 20, and noted the date he was directed to report, June 13. He contacted B&B Supervisor D. T. Reeder who informed him that because of his failure to respond as instructed he had forfeited his seniority rights and employment relationship with the Carrier. Grievant, it is clear, responded immediately on receiving notice from the Post Office on June 20, 1977.

A W A R D

1. The claim of Grievant C. V. Medina is denied.

2. The claim of Grievant F. R. Medina is sustained.

3. The claim of Grievant F. J. Stone is denied.

4. The claim of Grievant D. S. Holland is sustained without precedent in future cases.

PUBLIC LAW BOARD NO. 2267

Joseph Lazar

JOSEPH LAZAR, Chairman and Neutral Member

S. E. Fleming

S. E. FLEMING, Employe Member

E. R. Myers

E. R. MYERS, Carrier Member

Dated: 2-28-79