

PUBLIC LAW BOARD 2439

Award No. 99
Case No.99

PARTIES
TO
DISPUTE

Brotherhood of Maintenance of Way Employees
and
Southern Pacific Transportation Company

STATEMENT
OF CLAIM

- "(1) That the Carrier's decision to remove Mr. Rodolfo C. Lopez' name from the Los Angeles Division Seniority Roster was improper and without just and sufficient cause.
- (2) The Carrier shall be required to reinstate Mr. Lopez to his former position with compensation for all wage loss suffered, commencing July 22, 1984.

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

Claimant, a track laborer with a seniority date of 1972, was furloughed on September 7, 1979. The record does not indicate whether or not the Claimant filed his address pursuant to the terms of the Agreement in effect at that time. It appears that Claimant was to have been recalled to service in July of 1983. Carrier indicates that it was unable to communicate with him because it had no address on file where he could be reached and thus his services were terminated on August 12, 1983, in accordance with the provisions of Rule 50(a) of the Agreement.

Petitioner discovered that other junior employees were being recalled to service, prompting his investigation of the situation.

The record reveals some confusion with respect to Carrier's practice concerning the filing of addresses by employees who are furloughed, however, Claimant had no evidence whatever that he had at any time supplied Carrier with his current address. Similarly, Carrier does not have any indication that it notified Claimant by registered or certified mail of his recall to service as provided for in Rule 15(a) of the Agreement.

Based on these facts, the Board is faced with a problem of noncompliance with the Agreement conceivably on both the Carrier and the Employee's side. For this reason it is believed that Claimant should be reinstated to his former position with all rights unimpaired, but without compensation for time lost. The rationale for this position is that he apparently did not file his proper address with Carrier, and further Carrier did not attempt to notify him in the appropriate manner as set forth in the Agreement.

AWARD


Claim sustained in part. Claimant shall be reinstated to his former position with all rights unimpaired but without compensation for time lost.

ORDER

Carrier will comply with the Award herein,
within 30 days from the date hereof.



I.M. Lieberman, Neutral-Chairman



C.F. Foose, Employee Member



H. Moles, Carrier Member

San Francisco, California

January, 26 1987