

Award No. 3
Case No. 5

PUBLIC LAW BOARD NO. 2699

PARTIES Brotherhood of Maintenance of Way Employees
TO
DISPUTE: and
Union Pacific Railroad Company

STATEMENT Claim in behalf of Section Foreman C. T. Parham
OF CLAIM: for compensation for wage loss incurred May 29
to August 1, 1979, account improperly removed
from service in connection with derailment
occurring May 22, 1979.

FINDINGS: By reason of the Agreement entered into by and between
the parties on August 31, 1978, and upon all the
evidence and the whole record, the Board finds that the parties
are employees and carrier respectively as defined in the Railway
Labor Act, as amended, and that it has jurisdiction.

Claimant was dismissed from service by the Division
Engineer on June 27, 1979. Employees appealed that decision and
presented this claim in a letter dated July 15, 1979. On July 29,
1979, the Division Engineer wrote to Mr. R. D. Hardesty, then the
Assistant General Chairman, "that the Carrier is agreeable to
reinstating Mr. Parham on a leniency basis, with no pay for lost
time, but with seniority and vacation rights unimpaired". Claimant
was reinstated as an employee of the Carrier with full seniority
and vacation rights unimpaired on August 1, 1979.

August 1, 1979, was a Wednesday. In a letter dated
August 5, 1979 (Sunday) Mr. Hardesty wrote to Mr. Wimmer that
his offer in his July 29, 1979 letter was not acceptable. And
that letter also contained the following:

I assume by your letter, the second part of
our request is granted and we can work on
the claim. Mr. Parham returned to work on
August 1, 1979.


There is no validity for such an assumption. Mr. Wimmer's offer in his July 29, 1979 letter is clear and unambiguous. Claimant could return as an employee with no pay for lost time. There can be no mistake. That letter does not state explicitly nor does it imply that Claimant could return and retain his claim for lost earnings.

Neither does Mr. Hardesty's letter of August 5, 1979 refer to any conference or oral understanding that the claim for lost time remains valid. Nor does that letter imply that there was such a conference or oral agreement. Employees' statement in its submission that in a conference on July 29, 1979, "it was mutually agreed that the Claimant could return to work August 1 without prejudice to the Organization's right to continue processing the claim for lost time" is a mere assertion and not evidence. Further, that contention was never made on the property during the processing of this claim.


Upon this record, the Board finds that the claim was settled in full when Claimant returned to work on August 1, 1979. There is, therefore, no valid claim before the Board.

AWARD

Claim dismissed.


DAVID DOLNICK, Chairman and Neutral Member


E. R. MYERS, Carrier Member


S. E. FLEMING, Employee Member

DATED:  5, 1980