

Award No. 4
Case No. 6

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 J. B. Martinez,
OF CLAIM: Wyoming Division, for removal of discipline and
pay for time lost between May 25 and July 25, 1979,
in connection with alleged responsibility for
derailment of Rosebud Spur, April 27, 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.

After an investigation held on May 9, 1979, the
Division Engineer on May 24, 1979 dismissed Claimant from service
of the Carrier. Employees presented a claim for reinstatement
and for loss of earnings in a letter dated July 5, 1979. On
July 24, 1979, the Division Engineer wrote to the then Assistant
General Chairman, R. D. Hardesty "that the Carrier is agreeable
for reinstating Mr. Martinez on a leniency basis with no pay for
lost time, but with seniority and vacation rights unimpaired.
Mr. Martinez should promptly arrange to report to Section 2144
to accept his former duties". Claimant returned to work and
was reinstated on July 25, 1979. By letter dated July 30, 1979
Mr. Hardesty rejected the proposal made by the Division Engineer
on July 24, 1979. In that letter Mr. Hardesty wrote:

I assume by your letter, the second part,
whereas we can work on the claim was not
declined and Mr. Martinez returned to
work 7-25-79.

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These facts are comparable to those in Case No. 5. Here, too, there is no validity to an assumption that the claim for lost earnings remains before this Board after Claimant was reinstated as an employee of the Carrier. The Division Engineer's letter of July 24, 1979, is unmistakably clear.


The findings in Award No. 3 are applicable here and are affirmed. For all of the reasons stated in said Award No. 3, the Board finds that the claim was settled in full when the Claimant return to work on July 25, 1979. There is, therefore, no valid claim before this Board.

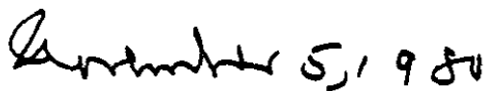
AWARD

Claim dismissed.


DAVID DOLNICK, Chairman and Neutral Member


E. R. MYERS, Carrier Member


S. E. FLEMING, Employee Member

DATED:  November 5, 1980