

PUBLIC LAW BOARD NO. 2774

Award No. 123
Case No. 123

PARTIES
TO
DISPUTE

Brotherhood of Maintenance of Way Employees
and
The Atchison, Topeka and Santa Fe Railway Company

STATEMENT
OF CLAIM

- "1. That the dismissal of Trackman G. M. Hernandez was without just and sufficient cause and in violation of the provisions of the current agreement as well as the long-stand practice, said action being capricious, unduly harsh and in abuse of discretion.
2. That Claimant Hernandez now be reinstated to his former position as Trackman with the Carrier with seniority and all other rights restored unimpaired and with compensation for all wage loss suffered."

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employees 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 herein had been employed by Carrier since 1977. He had been laid off when, on May 20, 1983, he received correspondence informing him that a position was available and that he had to make himself available for service within fifteen calendar days from the date of that letter. The record indicates that claimant had been in Old Mexico when he received the letter. He left Mexico on June 3, 1983, in order to arrive by June 6 to protect his job. He did not arrive on time and, pursuant to Rule 2, Section (c), of the agreement, Carrier indicated that he had forfeited his seniority and so notified him.

The record indicates that in the course of claimant's travel from Mexico to his position, he experienced automobile problems and other

personal problems. He contacted the Roadmaster requesting an extension of time and he was allowed an additional week. Again, due to unforeseen problems enroute he requested an additional extension of time in which to report but was refused such extension. His name was removed from service by Carrier effective June 6, 1983.

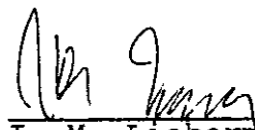
An examination of Rule 2, Section (c), indicates that the automatic nature of the action taken by Carrier is modified only by the phrase that the employee has not had a "satisfactory reason" for failing to report on the date indicated. It is this Board's view that claimant's serious personal problems and car trouble were within the bounds of the exception provided in the rule and, therefore, automatic termination was not appropriate. For that reason, it is this Board's view that claimant be reinstated to his former position with all rights unimpaired but without compensation for time lost. He also should be aware that this is his last opportunity to conform to the rules, particularly with respect to reporting at the time indicated.

AWARD

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

ORDER

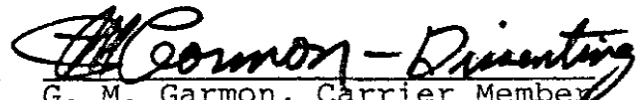
Carrier will comply with the award herein within thirty (30) days from the date hereof.



I. M. Lieberman, Neutral-Chairman



C. F. Foote, Employee Member



G. M. Garmon, Carrier Member

Chicago, IL

December 17, 1984