

PUBLIC LAW BOARD NO. 2774

Award No. 13
Case No. 20

PARTIES Brotherhood of Maintenance of Way Employees
TO and
DISPUTE The Atchison, Topeka & Santa Fe Railway Company

STATEMENT
OF CLAIM

1. That the Carrier violated the Agreement when on August 19, 1980 they dismissed T.T. Begay from service as a Miscellaneous Machine Operator-Trackman, said dismissal resulting from false and misleading information conveyed to Claimant.
2. That T.T. Begay be compensated for loss of earnings suffered account of Carrier's improper action."

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.

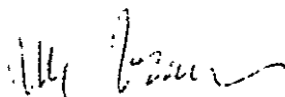
Claimant herein had worked for Carrier for approximately thirty years. According to the Petitioner the Claimant hurt his hand and went to his foreman on August 19, 1980 and told him that he wanted to go home and recuperate from the injury. Claimant spoke and understood very little English. The Assistant Foreman also a Navajo Indian interpreted for Claimant. As a result of the conversation, Claimant was asked to sign and did indeed a resignation form and then proceeded home. Subsequently, the claim on behalf of Mr. Begay was filed by the Navajo Nation with the Equal Employment Opportunity Commission involving the same incident. In April of 1981 the Organization was advised that the discrimination claim had been settled by agreement which resulted in Claimant being reinstated to his former position with seniority and all other rights unimpaired but without pay for time lost. It was also understood in that settlement that Claimant would be permitted to seek redress under the Collective Bargaining Agreement for any pay loss which he feels he suffered. It is that claim which is before this Board.

Contrary to the position taken by Petitioner, the evidence indicates (based on information received from the Foreman and Assistant Foreman) that on the date in question Claimant asked permission to go home because he wished a drive a relative back to the reservation. He was told that in order to do so he would have to resign. He thereupon signed a resignation form. There is no evidence to support the contention of Mr. Begay that he had injured his hand on that date. Furthermore, the evidence indicates that during his tenure with the Carrier he had resigned under similar circumstances on six occasions. In this instance, there is also evidence, supplied by the Carrier, that the Claimant indicated that he wished work with the gang after it returned to Kansas. He was told that he should check with a Carrier official in Gallup, New Mexico when he was ready to go back to work.

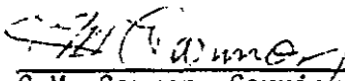
A careful review of the record indicates that the same pattern of conduct was involved in this matter as in the Claimant's previous resignations and rehires over many, many years. The Board can find no basis for the contention that he did not understand, in view of his language difficulty, the position of resignation as against that of a leave of absence. In short, Carrier's position in this matter is persuasive. It does not seem appropriate for the Board to take the position that Claimant should be reimbursed for the period he was out of work due to a misunderstanding based on the entire record herein. Thus, the claim must be denied.

AWARD

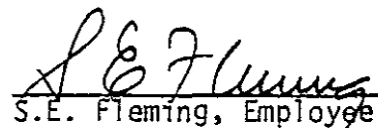
Claim denied.



I.M. Lieberman, Neutral-Chairman



G.M. Garmon, Carrier Member



S.E. Fleming, Employee Member

January 21, 1982
Chicago, IL