

PUBLIC LAW BOARD NO. 2774

Award No. 135
Case No. 135

PARTIES
TO
DISPUTE

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

STATEMENT
OF CLAIM

- "1. That the Carrier violated the provisions of the current agreement when it failed to restore former Section Foreman, Mr. F. D. Clevenger's Section Foreman's seniority rights within a reasonable period of time.
2. That Mr. F. D. Clevenger's seniority rights as a Section Foreman be restored with all restrictions removed and that he be compensated the difference in pay for the intervening period."

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.

Following an investigation, in December of 1980 Mr. Clevenger had been removed from service for allegedly misappropriating Carrier-owned gasoline for his own use in his own car. Subsequently, after being out of work for some 18 months, an agreement was reached to restore Mr. Clevenger to service on a leniency basis without pay for time lost, with a restriction that he could only work as a trackman until he could prove to the Carrier's satisfaction that he was worthy of the lifting of the restriction. Due to an extended illness, claimant was unable to accede to the settlement arrangement until September of 1982. In June of 1983 the Organization addressed a letter to Carrier asking for consideration to removal of the restrictions on claimant's reinstatement as a Section Foreman. Carrier responded, indicating that claimant had not demonstrated his desire or capability of faithfully and productively supervising employees and, therefore, denied the request. This exchange prompted the claim herein.

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In essence, Carrier's position in this matter is that claimant has not demonstrated to its satisfaction that he is capable of performing the duties of Section Foreman. Since he had been returned to work on a leniency basis, Carrier maintains that he must demonstrate that he merits consideration for lifting of the restriction. Petitioner, on the other hand, indicates that there is nothing in the record to demonstrate in the earlier disciplinary action that claimant did not possess the necessary qualifications to successfully fill the position of Section Foreman. Furthermore, according to the Organization, nowhere at any time has Carrier ever indicated precisely what was expected of claimant in order to have the restriction removed.

It is apparent that Carrier's judgment with respect to the demonstration by claimant of his ability to fill a Foreman's position was a highly subjective one. There is no indication of what deficiencies other than the alleged dishonest act existed prior to the original discipline, and no indication of what would be expected of claimant in order to qualify him at least for consideration of restoration to a Section Foreman's job. Claimant has put forth certain efforts which are beyond those of a Trackman but, to date, those efforts have gone unrecognized. It is this Board's view that claimant, under the circumstances and terms of the leniency understanding, is entitled to some demonstration of his ability to fill the Foreman's position. For that reason, the Board shall order that claimant be put back on the job of Section Foreman to demonstrate his ability and attitude with respect to that position for a sixty-day period. At the end of that time, Carrier may judge as to whether or not he has, indeed, demonstrated his ability to once again fill the Section Foreman's job. In this fashion, the vagueness of Carrier's requirements concerning the restriction will have been dealt with in a practical sense.

AWARD

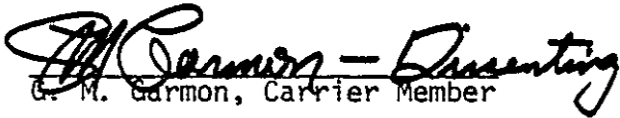
Claim sustained in part in accordance with the findings above.

ORDER

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

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I. M. Lieberman, Neutral-Chairman


G. M. Garmon, Carrier Member


C. F. Foose, Employee Member

Chicago, Illinois
April 30, 1985