

PUBLIC LAW BOARD NO. 2774

Award No. 138
Case No. 138

PARTIES
TO
DISPUTE

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

STATEMENT
OF CLAIM

- "1. That the Carrier violated the provisions of the current agreement when on May 16, 1984, it declined and otherwise refused to assign Track Foreman M. L. Wieman to the position of Track Supervisor, said action amounting to no more than an extension of discipline assessed at an earlier date without first according claimant the benefits of a fair and impartial hearing.
2. The Carrier shall be required to return claimant to his former position of Track Supervisor with seniority and all other rights restored unimpaired and with compensation beginning May 16, 1984 forward."

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.

The record indicates that claimant had been functioning as a Track Supervisor for approximately four and one-half years (having been an employee of Carrier since 1968) when he was cited for a disciplinary investigation in late 1980 for submitting erroneous time to Carrier. Following claimant's waiver of a formal investigation, he was dismissed effective October 31, 1980. Following the filing of a claim by petitioner herein on behalf of claimant, an agreement was reached for reinstatement of claimant on a leniency basis. He was returned to service on April 1, 1981, as a Track Gang Foreman. The letter setting forth the arrangement with respect to claimant dated March 19, 1981, provided as follows:

"This refers to mine of March 12 and our conference that date concerning former Tracker Supervisor M.L. Wieman.

Mr. Wieman has called on Superintendent Heath and Division Engineer after which it is their recommendation that Mr. Wieman be reinstated to service but restricted to working as Foreman until such time as he has proven sincerely that he can be depended upon to function acceptably as Track Supervisor.

Mr. Wieman can hold the section as Foreman at Fort Madison.

It is not our intention to see Mr. Wieman forfeit his Track Supervisor's seniority and we would appreciate your concurrence in handling his reinstatement on this basis."

This letter from the General Manager to the General Chairman of the Organization was ultimately concurred in by the Organization.

The record indicates that some three years later claimant asked that he be considered for a vacancy as a Track Supervisor. He met with the Division Engineer who had been involved in the earlier reinstatement. The Division Engineer informed claimant that his bid would be given consideration but, contrary to this statement (the Division Engineer having been transferred to a different division), claimant's bid was returned by the new Division Engineer with the statement that:

"An individual who has six on-duty injuries and four off-duty injuries during his tour of duty with the railroad is not an acceptable candidate for a Track Supervisor's position...."

It is the Organization's position that the Division Engineer's decision is contrary to the understanding reached earlier and the General Manager's instruction. It is particularly onerous, as the Organization views it, since the accidents are a permanent part of the record and, in fact, the Division Engineer's position would be that claimant would never be permitted to occupy the position of Track Supervisor. Furthermore, the Organization indicates that Carrier has failed to supply information with respect to any area in which claimant is deficient in his activities' having an impact on the potential of serving as a Track Supervisor.

Carrier takes the position that the claimant has not demonstrated sufficient ability to function as a Track Supervisor in a safe and acceptable manner. Part of the reason for this were the injuries referred to as the reason for

his rejection by the Engineer. Carrier notes that it would be difficult for employees to accept and follow instructions and advice for a Supervisor with a safety record such as that of claimant. The safety awareness of claimant is a prime consideration in Carrier's determination.

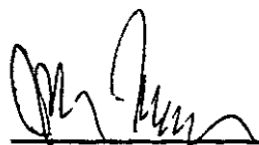
The Board has carefully evaluated the positions of the parties. As the Board views it, there is merit to both the position of Carrier, in view of claimant's record, as well as that of petitioner. The Board is somewhat at a loss to assess the intent of Carrier in view of the original reinstatement on a leniency basis, which had no relationship whatever to the matter of safety. Because of the nature of this strange type of dilemma which the parties face with respect to claimant, it appears to the Board that the most sensible approach to take is to give Mr. Wieman an opportunity to demonstrate his ability. For this reason, the Board concludes that claimant should be placed in the first vacancy for Track Supervisor which his seniority permits and, further, that he receive a six-month trial period in that position to demonstrate his ability to handle the job in a responsible fashion. All other aspects of the claim (in particular, compensation) are denied.

AWARD

Claim sustained in part; claimant shall be placed in the first available vacancy for Track Supervisor to which his seniority entitles him. He shall receive a six-month trial period to demonstrate his ability to handle the job in an effective and responsible fashion. He shall not be compensated for lost pay as requested in Paragraph 2 of the claim."

ORDER

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



I.M. Lieberman, Neutral-Chairman



C. F. Foose, Employee Member



G. M. Garmon, Carrier Member

Chicago, Illinois
February 6, 1986