

PUBLIC LAW BOARD NO. 2774

Award No. 17
Case No. 25

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

STATEMENT "1. That the dismissal of Northern Division Trackman D.T. Powell was
OF CLAIM without just and sufficient cause.
2. That Claimant D.T. Powell be reinstated to service with seniority, vacation, all benefit rights unimpaired, pay for wages lost and/or otherwise made whole."

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.

Article II, Section 5-B-1 of the Scheduled Agreement provides in relevant part as follows:

"Except as provided in Section 5-B-2 of this Article II when force is reduced or jobs are abolished, employees occupying the jobs at time of abolishment will displace any junior employee in their class on the seniority district; if no employee their junior in their class, will displace any employee their junior and each succeeding lower class in the seniority class until their seniority is exhausted....

Employees displaced under this Section 5-B-1 shall notify their supervisory officer in writing of their choice of displacement as soon as possible but not later than seven (7) calendar days after displaced. Failure to exercise displacing rights under this rule will result in forfeiting seniority."

The record indicates that Claimant herein last worked on May 20, 1980 and was displaced on May 21. On May 21, he called in to the office and was advised that he must exercise his seniority rights on any position as a Trackman seven days after the displacement. He said he would place later. On May 29, 1980, at 3:00 p.m. Claimant called in wanting

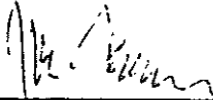
to place himself. He was told at that time by the Chief Clerk that he had failed to place himself within the seven days and in accordance with the Agreement had forfeited his seniority. At that time, Claimant indicated that he had been in an automobile accident and that he didn't think a day or two would make any difference in his calling.

The rule involved herein is self-executing. The sole issue before this Board is whether indeed there was a violation of that rule requiring that its terms be honored. The facts indicate clearly that Claimant did not call in and exercise his rights within the required seven calendar days. The only extenuating circumstance involved was whether indeed he was prevented from making such a call by being physically incapacitated and unable to do so. Carrier took the position that Claimant made no attempt to notify the Division Engineer's office of the accident or that due to the accident, he would be unable to place himself within the required period of time. Further, Carrier insists, without denying that the accident took place, that there was no verification or evidence of Claimant's inability to contact Carrier's office within the prescribed period.

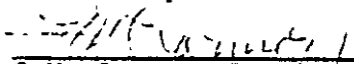
The Board finds by examination of the evidence that Claimant was simply careless in not attempting to exercise his rights within the specified and required seven days. The Clerk's statement indicated that he was not physically unable to do so in spite of the automobile accident. In fact there is no evidence of consequence indicating that there was a medical reason preventing Claimant from making a telephone call within the time frame. Harsh though it may seem, rules such as that indicated above are placed in the Agreement for a particular purpose and must be considered as strictly as any other rules in the contract. In this instance, Claimant simply failed to make the telephone call required by the rules and the rule became self-executing, thus he forfeited his seniority.

AWARD

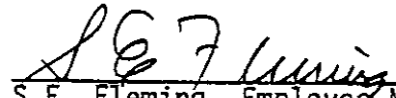
Claim denied.



I.M. Lieberman, Neutral-Chairman



G.M. Garmon, Carrier Member



S.E. Fleming, Employee Member

January , 1982
Chicago, IL