

PUBLIC LAW BOARD NO. 2774

Award No. 38
Case No. 47

PARTIES
TO
DISPUTE

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

STATEMENT
OF CLAIM

- "1. That the dismissal of Group 11, Class 2, Trackman Bobby Francis was unjust.
2. That Claimant Francis be reinstated to service with seniority, vacation, all benefit rights unimpaired, pay for way loss 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.

Claimant herein, a Trackman, had been in a furloughed status and was sent a letter dated January 12, 1981 advising him to report to Gallup, New Mexico on January 31, 1981. The letter also indicated that failure to report would result in loss of seniority. Having failed to report on February 12, 1981 a letter was addressed to Claimant from the Superintendent advising him that his failure to report resulted in his being dropped from the seniority roster.

The record herein indicates that Claimant had been involved in a serious automobile accident on January 18, 1981 resulting in bodily injury and hence, according to his testimony, preventing him from responding to the recall notice. He indicates that he had contacted the Employment Supervisor advising him of the accident as the reason for his inability to report on February 12. The Employment Supervisor's notes, however, indicate that she was not contacted by Claimant until March 2, 1981 and the reasons for his failure to report were somewhat different than those indicated above.

Carrier indicates that the loss of seniority involved in this matter was simply due to Claimant's failure to respond to the recall and there was no evidence presented indicating that he was physically incapable of responding or to make a timely notification to Carrier for any valid basis for failure to accept the recall.

Carrier's position is well taken. There is no evidence to indicate that Claimant made contact with the Carrier prior to the date of his recall nor was there any evidence of the mitigating circumstances at the time of his contact with the Employment Supervisor. Thus, Carrier's position has merit in that Claimant's loss of seniority was due entirely to his failure to both report or to request some consideration in view of the accident which he had been involved in.

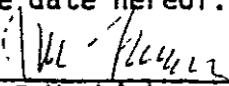
An examination of the file, however, convinces the Board that Claimant was indeed involved in a serious accident on January 18 which prevented him from reporting for duty on February 2. Hence, there were circumstances which could be considered mitigating in this situation. However, at the same time, it is clear that Claimant did not properly notify Carrier of his inability to report at the proper time as required in order to receive full consideration. For that reason, the Board concludes that Claimant be reinstated to his former position with all rights unimpaired but without compensation for loss of pay due to his culpability in the termination of his seniority.

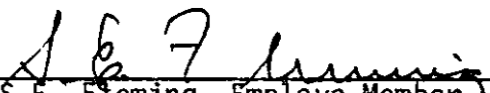
AWARD


Claimant will be reinstated to his former position with seniority and all other rights unimpaired but will not receive compensation for wage loss incurred.

ORDER

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


I.M. Lieberman, Neutral-Chairman


S.E. Fleming, Employee Member


G.M. Garmon, Carrier Member