

PUBLIC LAW BOARD NO. 2774

Award No. 64
Case No. 100

PARTIES
TO
DISPUTE

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

STATEMENT
OF CLAIM

- "1. That the removal of Albuquerque Division Miscellaneous Machine Operator Francis Homes from his position as Miscellaneous Machine Operator was unjust.
2. That Claimant Homes be reinstated to his position as Miscellaneous Machine Operator and compensated for all wage loss suffered, including meal and lodging expenses, 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.

The record indicates that claimant had been working as a Tamper Operator (Miscellaneous Machine Operator) on the Albuquerque Division. The record indicates further that supervision was experiencing problems with him concerning the maintenance of the machine assigned to him. It is noted that claimant had seniority dating back to July of 1957. In June of 1981 claimant was removed from his position as Miscellaneous Machine Operator and returned to work as a Track Man.

Petitioner insists that claimant's removal from the position as Miscellaneous Machine Operator was a disciplinary matter and further that Carrier did not properly accord claimant a formal investigation required by the Agreement. The Organization insists that Carrier did not substantiate its decision to remove claimant as a matter of disqualification and it is obvious that it was clearly a disciplinary matter. Carrier argues that claimant was disqualified as a Miscellaneous Machine Operator for proper reasons and Carrier's action was wholly in accordance with the Agreement. Carrier states that it has the prerogative to determine fitness and ability of its employees and, in this

instance, claimant was found to be lacking in view of his inability to properly maintain the equipment.

The Board notes that by letter dated August 31, 1981, the General Manager stated, inter alia, as follows:

"Consequently, under date of June 19, 1981, Division Engineer Garland advised Mr. Homes that as a result of his poor attitude and maintenance in the operation and care of his machine, he was being removed therefrom immediately...."

The Board finds that in the Division Engineer's action there was no indication of disqualification, nor was there any evidence concerning claimant's lack of fitness and ability to operate the equipment in question. While there is little doubt that claimant failed to maintain the equipment properly and was indeed in violation of Carrier rules with respect thereto, he still was not disqualified but, on the face of it, disciplined for his failures. However, the discipline was not accompanied by an investigation as required by the rules and, hence, claimant's position herein is correct and must be sustained.

As indicated above, in view of Carrier's failure to properly discipline (or disqualify) claimant, the claim must be sustained. On its face it is apparent that a disciplinary action was contemplated by the Division Engineer in the action which he took. In sustaining the claim, however, claimant will be made whole only for the difference in rate of pay (not including meal and lodging expenses) for the period from the time of his removal from the position for all days in which his seniority would have permitted him to operate the machine until the date hereof. Further, assuming he can meet the requirements, including book of rule examination and other specific required examinations, claimant be permitted to displace on a machine, if he so desires, which his seniority permits.

AWARD

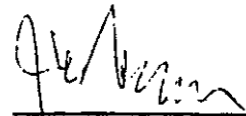
Claim sustained in accordance with the findings above.

ORDER

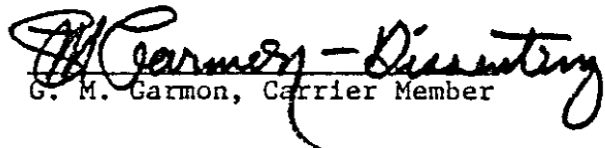
Carrier will comply with the Award herein within thirty days from the date hereof.

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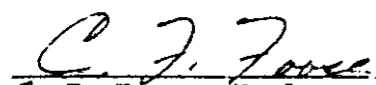
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I. M. Lieberman, Neutral-Chairman



G. M. Garmon, Carrier Member



S. F. Foose, Employee Member

Chicago, Illinois

December 7 , 1983