

PUBLIC LAW BOARD NO. 2774

Award No. 70
Case No. 107

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 agreement when it failed to recall Trackman, Mr. C. Juarez, Jr., in seniority order on September 3, 1982, and instead called and assigned Jr. Trackman to perform services rightfully belonging to claimant. In so doing, caused claimant loss of work and compensation connected thereto.
2. That claimant now be allowed compensation at the rate applicable to the position of Trackman beginning September 13, 1982, up to and including November 15, 1982."

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 on September 3, 1982, a certified letter was sent to claimant's last-known address instructing him to return to work on Extra Gang 23 on September 13, 1982. The claimant did not report to work on the date indicated, or within the fifteen days prescribed in Rule 2, Section (c), of the agreement. Thereafter, by certified mail dated October 28, 1982, claimant was told that because of his failure to report within the fifteen days specified in Rule 2, his name was removed from the seniority roster.

Carrier insists that the proper certified letter was sent on September 3, 1982, and the fact that the letter was not returned made the Carrier presume that he had received it. Therefore, Carrier's actions subsequently in terminating claimant were perfectly in order. Without prejudice to this fact, Carrier had agreed on about November 15 to reinstate claimant with seniority rights unimpaired but without pay for time lost. The claim herein is for the period of time during

which claimant was out of work prior to his reinstatement on a leniency basis.

Petitioner takes the same position it did in Award No. 69 of this Board in which a totally analogous situation was dealt with. In short, Petitioner insists that there could not have been a failure to report within the fifteen days indicated in the notification of recall since the recall letter had never been received by claimant.

The Board is of the belief, as in the immediately preceding Award No. 69, that it was incumbent upon Carrier to establish the fact that the recall letter was received. It is noted that Carrier alleges that the letter was sent certified mail. However, obviously no return receipt was received by Carrier and, indeed, there is no evidence that the receipt was requested. Carrier does indicate that it believes the letter was delivered on the basis of presumption alone. In the Board's view, as in the earlier case, this presumption is unjustified. Whether or not the correct address was used on the original letter of recall is immaterial. The fact remains that Carrier has not established without any doubt that, indeed, claimant received the letter of recall. It was obligated to make such fact clear and unequivocal in order to remove claimant's name subsequently from the seniority roster. As in the earlier case, this was not done and the claim must be sustained.

AWARD

Claim sustained.

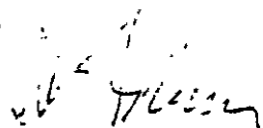
ORDER

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

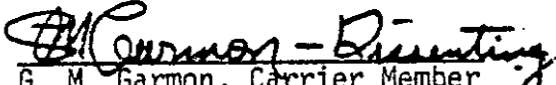
PLB No. 2774

- 3 -

Award No. 70
Case No. 107


I. M. Lieberman, Neutral-Chairman


C. F. Foose, Employee Member


G. M. Garmon, Carrier Member

Chicago, Illinois
July 23, 1984