

PUBLIC LAW BOARD NO. 2774

Award No. 74

Case No. 111

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

STATEMENT
OF CLAIM

1. That the Carrier violated the provisions of the current agreement when on February 23, 1983, it removed Trackman W. S. Maestas' name from the appropriate seniority roster and terminated his seniority and employment relationship with the Carrier, and in so doing, caused him loss of compensation rightfully belonging to him by virtue of his seniority rights under the current agreement.
2. That Claimant, W. S. Maestas, name now be placed on the appropriate seniority roster and that his employment relationship and seniority be reinstated with compensation for all wage loss suffered and with seniority and all other rights restored unimpaired."

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 the Claimant herein (with a seniority date of April 5, 1977) received a notification on January 28, 1983, of a force reduction involving him effective at the close of work on February 4, 1983. In the same notice, the Claimant and the other employees affected were reminded to make sure to comply with the Agreement Rule 2, Section (c), and file recall addresses as prescribed. On February 23, 1983, the Division Engineer by letter, with copies to Claimant as well as the General Chairman, indicated that four employees had failed to file recall addresses and were being removed from the seniority list for that reason.

The Organization notes that upon receipt of a copy of Carrier's letter (which was received at the address on file with Carrier), Claimant immediately investigated

and produced evidence to the effect that the Head Car Clerk had placed the letter addressed to Mr. Lake in the receiving box at Mormon Yard for the Roadmaster to handle. The Head Car Clerk stated in his signed statement that the recall letter was received on February 14, 1983, and placed in the Roadmaster's box on that date. The Organization contends that Claimant made a bona fide effort to file his address in accordance with the requirements and for some reason unexplained it was not received by the proper Carrier official.

Carrier maintains that Claimant failed to file his address in writing in accordance with the requirements of Rule 2, Section (c). Hence, it was entirely correct for Carrier to remove his name from the seniority roster. With respect to the alleged action of Claimant in placing his letter in the receiving box, that letter was never received by the Division Engineer, according to Carrier, who was the official designated to receive the designation. The Carrier concludes that there has been no proof of receipt of the letter by the Carrier in this instance and, hence, the Organization failed to meet its burden of proof to establish that the Division Engineer received the alleged notification.

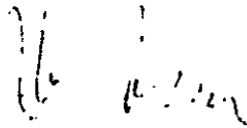
The Board notes that the rule in question does not require certified mail for the mailing of the Claimant's address. Therefore, it would have been presumed that, had the letter been properly addressed and stamped and put into the U. S. Mails, it would have been received by the addressee. In this instance, the U. S. Mails were not used and the Organization has relied on the statement of the Head Car Clerk to corroborate Claimant's assertion that he did, indeed, notify Carrier. There is the additional factor that Carrier's communication was received by Claimant at the address on the alleged notification. The Board concludes that although Claimant did not use the best means of notifying Carrier and the presumption of the receipt of the letter is, indeed, only a presumption with no actual proof, based on the particular circumstances in this instance, the Board believes that Claimant should be reinstated to his former seniority status and given employment based on his seniority but without compensation for time lost.

AWARD

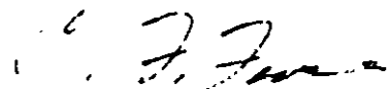
Claim sustained in part; Claimant shall be restored to the seniority roster with all rights unimpaired and given employment to which his seniority entitles him. He will not be compensated for time lost.

ORDER

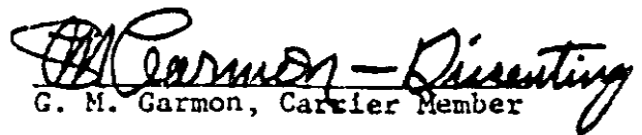
Carrier will comply with the Award herein within 30 days from the date hereof.



I. M. Lieberman, Neutral-Chairman



C. F. Foote, Employee Member



G. M. Garmon, Carrier Member

Chicago, Illinois

February 2, 1984