

PUBLIC LAW BOARD NO. 2960

AWARD NO. 128
CASE NO. 163

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Chicago & North Western Transportation Company

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement in terminating Ms. D. C. Shannon. As a result of this wrongful termination, Ms. Shannon was deprived of work opportunity between August 20, 1984 and September 27, 1984.

(2) Claimant Shannon shall be compensated 192 hours at the straight time rate and 15.5 hours at the time and one-half rate of pay.

OPINION OF THE BOARD

This Board, upon the whole record and all of the evidence, finds and holds that the Employee and Carrier involved in this dispute are respectively Employee and Carrier within the meaning of the Railway Labor Act, as amended, and that the Board has jurisdiction over the dispute involved herein.

Some facts are undisputed. It is undisputed that the Claimant entered service as a track laborer on June 19, 1984. On July 23, 1984, she was working on a rail gang in the vicinity of Onida, South Dakota. This gang was under the supervision of Foreman L. L. Nicolay, and a notice was posted on July 23,

abolishing the gang effective July 30, 1984. The Claimant asked Mr. Nicolay if she could leave work that day as she was scheduled to take a European vacation. Mr. Nicolay gave her permission to do so, but reminded her that if she desired to protect her seniority, it would be necessary for her to file a rights retainer. Claimant did not perform work on the gang subsequent to July 23. At some point later, she discovered during her absence she had been terminated. On August 6, she contacted the ADM-Administrator's office.

What occurred on August 6 when she contacted the ADM office is disputed. The Union asserts that the Claimant contacted the Carrier to file a rights retainer as required by the Agreement whereupon she was refused assistance from the ADM-Administrator's office and informed of her termination. They also assert the Claimant was told that the Foreman could supply an explanation, however, her attempts to locate the Foreman were unsuccessful.

The Carrier claims that she called on August 6 to determine why a letter advising her that her application for employment was rejected had been sent on July 30. They also assert that because Mr. Corrigan was at lunch when Claimant called, she was transferred to the office of the Assistant Division Manager-Engineering, where she talked to a payroll clerk. The clerk advised her that she would have to call Mr. Corrigan or her supervisor.

It is undisputed regardless of the precise events on August 6 that her next contact with the Carrier was on September 19,

1984. She talked to Corrigan who decided the termination was erroneous. The Claimant subsequently bid on a rail gang job at Basset, Nebraska, and reported back to work on October 8, 1984. Subsequently, the claim was filed based on the contention that except for the improper termination, the Claimant was eligible for available work which existed and thus was deprived of work opportunities.

It is the opinion of the Board that in order to prevail the Claimant would have to show she was available to work during the period in dispute. The evidence, however, does not yield this conclusion. There simply isn't any satisfactory or justifiable explanation why there was no contact between the Claimant and the Carrier for such a long period of time between August 6 and September 19. Even if we believe the Claimant that she was unable to contact the Foreman on August 6, too much remains unexplained about the period of time as a whole to conclude she was available for work. Thus, she is primarily responsible for her loss of work opportunities since the Carrier moved with reasonable dispatch to remedy the situation when a responsible officer was finally alerted to the unique circumstances.

Accordingly, the factual basis necessary to sustain the claim is lacking and it must be denied.

AWARD:

The Claim is denied.



Gil Vernon, Chairman



D. D. Bartholomay, Employee Member



Barry E. Simon, Carrier Member

Dated:

Sept 10, 1987