PUBLIC LAW BOARD NO. 3308

Award No. 16
Case No. 17

PARTIES TO DISPUTE: Brotherhood of Maintenance of Way Employes

The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM: "Claim for reinstatement of former Trackman M. S. Carrington, Middle Division, 'with his correct seniority, vacation, all other benefit rights unimpaired and compensated for all wage loss and/or otherwise made whole beginning May 10, 1982.' account the claimant's name being improperly removed from the seniority roster for failure to respond to recall."

FINDINGS: Upon the whole record, the Board finds that the parties herein are Carrier and Employes 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 Claimant was a furloughed employe subject to recall to service. In a letter dated April 23, 1982, Claimant was recalled to service, effective May 10, 1982. He was also instructed to contact the Carrier on either May 6 or May 7, 1982 for his assignment. On May 9, 1982, Claimant contacted the Carrier and advised he could not report on May 10, 1982. The Carrier gave him permission not to report on May 10, 1982, but he was expected to report on May 11, 1982. Claimant did not respond to recall on May 11, 1982 as directed. In a letter dated May 12, 1982, Carrier advised Claimant that his name was being removed from the seniority roster in accordance with the provisions of Rule 2, Section (c) of the Agreement.

The pertinent part of Rule 2, Section (c) reads as follows:

> "xxxx failure to report on the date indicated in the notification of recall, not to exceed fifteen (15) calendar days from date of notification of recall forwarded to the employe's last known address, without a satisfactory reason, will result in forfeiture of seniority in the class where recalled."

The Organization contends that Claimant was discharged without the benefit of a formal investigation in violation of Rule 13-DISCIPLINE.

Rule 2, Section (c) is self-executing and provides that failure to respond in timely fashion results in an employe being considered resigned. Our conclusion that the rule is self-executing and provides for an automatic loss of seniority is consistent with numerous awards of various Divisions of the National Railroad Adjustment Board. This type of self-executing rule is not within the contemplation of Rule 13.

We have reviewed this record in detail and find no probative evidence to show Claimant complied with the mandatory provisions of Rule 2, Section (c). Therefore, Carrier did not violate the Agreement.

AWARD Claim denied.

Clarence H. Herrington
Clarence H. Herrington
Neutral Member

M Carson
Carrier Member

L E Fleming
Organization Member

Dated at Chicago, Illinois
March 1, 1983