

PROCEEDINGS BEFORE PUBLIC LAW BOARD NO. 3781

AWARD NO. 47

Case No. 47 (113)

Referee Fred Blackwell

Carrier Member: J. H. Burton

Labor Member: W. E. LaRue

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

vs.

CONSOLIDATED RAIL CORPORATION

STATEMENT OF CLAIM:

Claim of J. Piskura for reinstatement of seniority and all wage and benefit loss incurred as a result of his termination.

FINDINGS:

Upon the whole record and all the evidence, after November 8, 1990 hearing in Washington, D. C., 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 by agreement and has jurisdiction of the parties and of the subject matter.

OPINION

The Claimant, Mr. J. Piskura, protests Carrier's May 28, 1987 letter which terminated his Maintenance of Way Seniority under Rule 4, Section 3, due to his failure to return to work from furlough within ten (10) days of April and May letters of notification to report to the Elizabeth Track Office, Elizabeth, New Jersey. The April and May letters were mailed to Zabriski Street, Jersey City, NJ, which was the Claimant's address of record with

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the Carrier; and to a previous address of record, also in Jersey City. The return to work letters and the May 28, 1987 seniority forfeiture letter, were sent Certified Mail and were returned to Carrier marked "unclaimed" or "unknown."

At the time in question the Claimant was not at the address on Zabrisky Street and had filed a change of address order with the U. S. Postal Service effective May 1987-November 1988. Possibly because the Claimant was homeless during this period and was enrolled in a therapy program, at St. Lucy's Shelter, the change of address order did not serve to route the Carrier letters to him. The record does not show how or when Claimant learned about the forfeiture of seniority, but, the herein protest was filed in October 1987.

In the context of Claimant's personal life during the pertinent period, the filing of a change of address order with the Post Office was a plausible action; it was intended to keep him in touch with society and job opportunities and he could reasonably expect the Postal Service to deliver his mail in accord with the change of address order. However, the Postal Service did not carry out the change of address order, and thereby prevented Claimant from having knowledge that he had been recalled to work from furlough. The Board finds therefore that the Claimant's failure to respond to the return to work letters of April and May 1987 was due to conditions beyond his control, which renders Rule 4, Section 3, inapplicable; and that upon learning of these

P. L. BOARD NO. 3781 / AWARD NO. 47 / CASE NO. 47 [113]

conditions in October 1987, the Carrier should have reinstated him to the seniority roster.

Accordingly, in view of the foregoing and on the whole record, the Carrier will be directed to reinstate the Claimant's Maintenance of Way Seniority; however, since the Carrier is not responsible for the acts of the Postal Service, the Carrier should not be held liable for wage loss.

AWARD:

The Carrier is directed to reinstate the seniority of the Claimant, but his claim for wage loss is denied.

BY ORDER OF PUBLIC LAW BOARD NO. 3781



Fred Blackwell, Neutral Member

J. H. Burton, Carrier Member



W. E. LaRue, Labor Member

Executed on _____, 1991

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