

PUBLIC LAW BOARD NO. 4823

PARTIES) THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
TO) versus
DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

STATEMENT OF CLAIM:

"Carrier's decision to remove former Valley Division B&B Helper R. Rojas and Trackman J. D. Hendrickson from service was extreme, unwarranted and unjustified.

Accordingly, Carrier should now be required to reinstate the claimants with their seniority rights unimpaired and compensate them for all wages lost and/or made whole beginning July 14, 1989, forward. (Carrier file 11-970-60-461; Organization's file 190-2-8926)"

FINDINGS:

This Public Law Board No. 4823 finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction.

Claimants Rojas and Hendrickson were assigned to positions in B&B Gang No. 12. Their positions were abolished at close of work on Friday, June 30, 1989.

Claimant Rojas did not have sufficient seniority to displace; therefore, he was considered off in force reduction (furloughed). Rules 2(c) and 3-(c) of the current Maintenance of Way Agreement read, in pertinent part, as follows:

2 - (c) - Retention of Seniority.

"Employee(s) laid off in force reduction shall retain their seniority provided they (1) file their address in writing within fifteen (15) calendar days after being displaced ***"

3 - (c) - Displacing as a Result of Force Reduction.

**** when forces are reduced or jobs are

abolished, employees occupying the jobs at time of abolishment will displace any junior employee in the highest paid seniority class where seniority is held; if no employee their junior in the highest paid seniority class where seniority is held, they will displace any employee their junior in each succeeding lower paid class where seniority is held until their seniority is exhausted. *** failure to exercise displacing rights under this rule will result in forfeiture of seniority."

Claimant Rojas did not file his address in writing within fifteen (15) calendar days after being displaced (furloughed).

Claimant Hendrickson did not have sufficient seniority to displace as a B&B Helper, however, he held seniority as a trackman in addition to seniority as a B&B Helper. Upon the abolishment of his position in B&B Gang No. 12, he had sufficient seniority to displace as a trackman, but he did not do so; as a consequence, he forfeited his seniority as a trackman, pursuant to Rule 3-(c), supra. By virtue of forfeiting his seniority as a trackman (and lacking sufficient seniority to displace as a B&B Helper), he was considered off in force reduction (furloughed). He did not file his address in writing within fifteen (15) calendar days after being displaced (furloughed).

The record contains no indication that any mitigating factors were involved in the claimants' failure to file their respective addresses as required by Rule 2-(c).

It has been firmly and unequivocally established by numerous awards on this property (among the many, see Third Division Awards 28143 and 28144, as well as Awards 12, 16, 17 and 18 of Public Law Board No. 3308) that Rule 2-(c), supra, is a self-executing rule. Failure to comply therewith results in the automatic loss of seniority. Accordingly, the Board finds no basis for sustaining the instant claim.

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AWARD: Claim denied.

G. Michael Garmon
G. Michael Garmon, Chairman

Employee Member

L Z Pope
Carrier Member

Dated at Chicago, IL:

July 10, 1990