

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:

Claim on behalf of B&B Helper R. A. Ervie, Illinois Division, seniority date July 9, 1979, for reinstatement to his former position with seniority, vacation and all benefit rights restored and compensation for all wage loss and/or made whole beginning August 24, 1989, continuing forward until the claimant is restored to his former position.

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.

On August 2, 1989, Carrier's Division Manager wrote the claimant a certified letter, return receipt requested, with a copy also sent to the claimant via regular mail, notifying him of his recall to service and instructing him to report for duty on August 7, 1989. This letter was addressed to the claimant at his last known address and contained the following:

"In accordance with Rule 2, Section C of the Maintenance of Way Agreement, failure to report on the date indicated in the notification of recall, not to exceed fifteen (15) calendar days from the date of notification of recall forwarded to the employee's last known address, without a satisfactory reasons (sic.), will result in forfeiture of seniority in the class where recalled.

Failure to report by Tuesday, August 16, 1989, will result in loss of seniority."

The certified copy of the aforementioned letter was returned, "Unclaimed."

On August 24, 1989, the Division Manager sent the claimant another certified letter, return receipt requested,

notifying him that his name had been removed from the seniority roster account failure to respond to recall, pursuant to Rules 2(c) and 4(c) of the Agreement. A copy of this letter was sent to the Employees; i.e., Mr. P. C. Wolfersberger, General Chairman.

The Employees contend that the claimant's seniority was taken away from him without giving him an opportunity to present his reason for not responding to recall. The Board does not agree with the contention of the Employees. The Carrier complied with the provisions of Rule 2(c). Having done so, the burden then fell upon the claimant to report for duty as instructed or provide a satisfactory reason for not reporting within the time frame stipulated by Rule 2(c). The claimant neither reported for duty as instructed nor provided any reason for his failure to report.

Rule 2(c) is a self-executing rule and failure to comply therewith requires automatic removal of seniority. Accordingly, the Board finds no basis for the Employees' claim.

AWARD: Claim denied.

Michael Garmon
G. Michael Garmon, Chairman

C. F. Foss
Employee Member

I. Z. Pope
Carrier Member

Dated at Chicago, IL:

March 2, 1990