

BEFORE PUBLIC LAW BOARD NO. 6043

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
ILLINOIS CENTRAL RAILROAD**

Case No. 14

STATEMENT OF CLAIM:

The dismissal of Track Supervisor T.L. Smith under the provisions of Rule 7(c) was without cause. Accordingly, Mr. Smith should be allowed to exercise his seniority.

FINDINGS:

At the time of the events leading to this claim, the Claimant was employed by the Carrier as a track supervisor.

In late September 2001, the Carrier conducted an internal investigation of charges that the Claimant had engaged in inappropriate physical contact with a co-worker's spouse. As a result of this investigation, the Claimant was dismissed from service. On October 5, 2001, the Claimant submitted a Notice of Displacement, seeking to exercise his seniority to displace a junior employee holding a position in Mobile. The Carrier rejected the Claimant's displacement form, asserting that he no longer possessed seniority and displacement rights under the terms of Rule 7(c) of the Agreement. The Organization filed a claim on the Claimant's behalf, challenging the Carrier's rejection of the Claimant's displacement form and contending that the Claimant's dismissal was without cause. The Carrier denied the claim.

The Carrier initially contends that the Claimant was dismissed from his position when he admittedly engaged in inappropriate physical contact with a co-worker's spouse.

The Carrier argues that Rule 7(c) is not misleading and clearly states that an employee who is dismissed for cause automatically forfeits all seniority and rights to positions covered by the Agreement. The Carrier therefore asserts that it was not obligated to allow the Claimant to exercise a seniority move.

The Carrier ultimately contends that the claim is without merit and should be denied in its entirety.

The Organization initially contends that the Carrier has yet to show cause for the Claimant's dismissal. The Organization acknowledges that under Rule 7(c), an employee who is dismissed for cause does forfeit all seniority and his right to return to any position covered by the Agreement. The Organization maintains, however, that the Carrier's application of Rule 7(c) to the Claimant's case is misleading because this rule also allows an employee who voluntarily resigns from an official position to displace any regularly assigned employee. The Organization argues that the Claimant resigned from his official position as track supervisor.

The Organization then addresses the Carrier's assertion that because of the October 8, 2001, disqualification notice, the Claimant could not exercise his right to displace any junior regularly assigned employee in any classification in any sub-department in which he held seniority. The Organization argues that the Carrier's position is misleading and clearly indicates that the Carrier has no intention of complying with any part of Rule 7 because the Carrier already had determined that it would not allow the Claimant his displacement rights. The Organization emphasizes that this determination does not allow the Claimant to retain his seniority rights and to continue

accumulating seniority in the territory from which he was promoted, nor does it allow the Claimant to displace any junior employee in any classification in accordance with the Agreement. The Organization argues that the Claimant can displace any junior employee in any classification in which he holds seniority.

The Organization goes on to assert that the Carrier should have handled the Claimant's situation in a different way. The Organization points out that the Claimant was dismissed and/or voluntarily resigned as a Track Supervisor at Hattiesburg, Mississippi. The Claimant then submitted his Notice of Displacement, and the Organization contends that the Carrier should have allowed the Claimant his right to displace. The Organization maintains that under Rule 33 - Discipline, employees are not to be disciplined or dismissed until after a fair and impartial hearing upon timely notice.

The Organization then argues that because the Claimant is not being allowed to displace any junior employee in any classification in any sub-department in which he has seniority, the Claimant obviously has lost work opportunities. The Organization ultimately contends that the claim should be sustained, and the Claimant reinstated with payment for all time lost.

The parties being unable to resolve their dispute, this matter came before this Board.

This Board has reviewed the evidence and testimony in this case, and we find that there was sufficient evidence in the record to support the finding that the Claimant was guilty of violating Carrier rules when he fondled a subordinate's wife's breast. This Board finds that the action taken by the Claimant was wrongful and constituted a

sufficient basis for the Carrier to dismiss him from employment.

Once the Claimant was dismissed from his position, the Claimant lost his rights pursuant to Rule 7. Rule 7(c) states the following, in part:


When an employee who occupies an official or excepted position is dismissed for cause, said employee automatically forfeits all seniority and right to return to positions covered by this agreement.

Although the Claimant wished to resign his position and return to another position, Rule 7(c) makes it clear that once he is dismissed, he has no right to promotion or demotion under Rule 7. He automatically forfeited all seniority and rights to return to positions covered by the agreement when he was terminated for cause.


For all of the above reasons, the claim is denied.

AWARD:

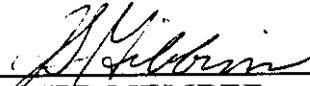
The claim is denied.



PETER R. MEYERS
Neutral Member



ORGANIZATION MEMBER
DATED: 5-21-03



CARRIER MEMBER
DATED: 5/21/03