

PROCEEDINGS BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1016

AWARD NO. 13

Case No. 13

Referee Fred Blackwell

Carrier Member: R. O'Neill

Labor Member: S. V. Powers

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

vs.

CONSOLIDATED RAIL CORPORATION

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

(1) The termination of the seniority of Trackman S. Turner for alleged absence without permission in excess of fourteen (14) consecutive days was arbitrary, capricious and in violation of the Agreement (System Docket CR-1812).

(2) The claimant shall be reinstated with seniority and all other rights unimpaired, his record shall be cleared of the charge leveled against him and he shall be compensated for all wage loss suffered.

FINDINGS:

Upon the whole record and all the evidence, and after hearing on December 5, 1988, in the Carrier's Office, Philadelphia, Pennsylvania, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that the Claimant, who was duly notified of said hearing and of his right to be present and participate in same, did not attend said hearing; and that this Board is duly constituted by agreement and has jurisdiction of the parties and of the subject matter.

OPINION

This is a seniority forfeiture case in which the background facts commence with the Claimant's dismissal from the Car-

rier's service on December 21, 1984 for insubordination and other infractions. Subsequently, the Claimant was reinstated to service by the Carrier on the basis of leniency by letter dated April 25, 1985 which stated that the Claimant's reinstatement to service was subject to Medical Department clearance. The Claimant and the Organization agreed to the terms of the leniency reinstatement on June 3 and 4, 1984.

The Medical Department clearance was not obtained by the Claimant by August 22, 1985, whereupon, by letter issued on that date the Carrier notified the Claimant that due to his absence in excess of fourteen (14) consecutive days without permission of his supervisor, his seniority had been forfeited under Rule 28 of the Schedule Agreement.

Subsequent to the Carrier's letter of August 22, 1985, the Organization appealed the action taken in that letter on the basis that the Claimant made several inquiries at the Division Engineer's Office at Harrisburg to request Carrier arrangements on his submitting to a physical examination by a Carrier Physician; and that such inquiries had not resulted in any arrangements for a physical examination.

The Carrier in contrast asserted, that the Claimant made no attempt to return to service, and that the Division Engineer's Office had no record that the Claimant contacted anyone there.

After review of the foregoing and of the record as a whole, including the submissions presented by the parties in support of their respective positions in the case, the Board notes

that the record contains no direct evidence to confirm or rebut the parties' assertions about the reason for the Claimant not obtaining medical clearance. Consequently, the Board finds on the confronting record that the permanent loss of the Claimant's seniority is inappropriate, and that the proper disposition of the claim is to award the Claimant reinstatement to the seniority roster while disallowing his claim for lost wages.

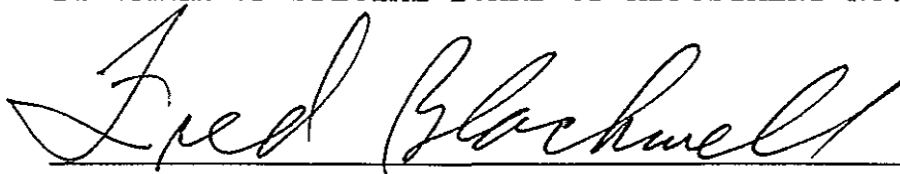
In view of the foregoing, and on the record as a whole, the Claimant will be reinstated to the seniority roster but his claim for compensation is denied.

AWARD

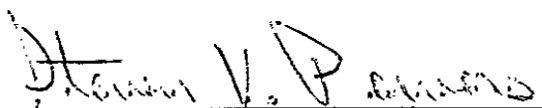
The Carrier shall within thirty (30) days reinstate the Claimant to the seniority roster; the claim for lost wages is disallowed.

The parties have been notified of this Award by Memorandum Letter dated January 21, 1989.

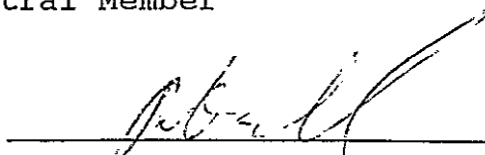
BY ORDER OF SPECIAL BOARD OF ADJUSTMENT NO. 1016



Fred Blackwell, Neutral Member



S. V. Powers, Labor Member



R. O'Neill, Carrier Member

Executed on March 2, 1989.