

PROCEEDINGS BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1016

AWARD NO. 14

Case No. 14

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 Agreement was violated when the Carrier improperly closed the service record of Trackman C. Ford (System Docket CR-2296).

(2) The claimant shall have his seniority restored unimpaired and he shall be reinstated with compensation 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, at which the Claimant was present, 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

By letter dated July 5, 1985 the Carrier's Regional Medical Director, Doctor D. W. Bishop, notified the Claimant that based on a June 28, 1985 medical examination by Doctor Anthony N. Pannozzo, he was qualified to return to work as a Trackman effec-

tive July 15, 1985. The Claimant failed to return to work in response to the Bishop letter, whereupon, by letter dated September 3, 1985, the Carrier's Production Engineer notified the Claimant that because he had failed to exercise seniority in accord with Rule 5 (b) of the current Agreement by July 25, 1985, his name had been removed from the seniority roster.

On June 18, 1985, prior to the Claimant's June 28 examination by the Carrier's physician and prior to the dates of the foregoing Carrier correspondence, the Claimant was examined by his personal physician, Doctor David Steele, who reported a prognosis of "uncertain for return to work" (Employee Exhibit A-1). The Claimant did not submit Doctor Steele's letter to the Carrier prior to the Carrier's September 3, 1985 letter concerning his removal from the seniority roster, but it was enclosed with the Organization's October 10, 1985 letter which submitted a grievance in the Claimant's behalf.

After due study of the foregoing and of the whole record, the Board concludes that Doctor Steele's June 18, 1985 medical report constitutes a mitigating consideration in the Claimant's behalf. Poor judgement is reflected by the Claimant's failure to send the Steele letter to the Carrier upon receipt of Doctor Bishop's July 5, 1985 letter; however, since the Steele letter came into existence before the June 28 examination of the Claimant by Doctor Pannozzo, the Steele letter provides an excusable reason for the Claimant's apparent belief that Doctor Pannozzo's findings did not govern his situation.

Accordingly, on the basis of the record as a whole, the Claimant will be restored to the seniority roster with seniority rights unimpaired. The record does not support an Award for lost time and consequently, the claim for compensation will be disallowed.


Having disposed of this matter as per the foregoing findings, the Organization's contention regarding a time limit violation by the Carrier is not reached.

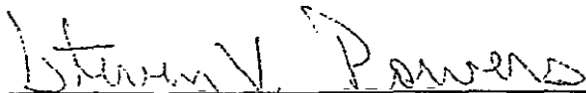
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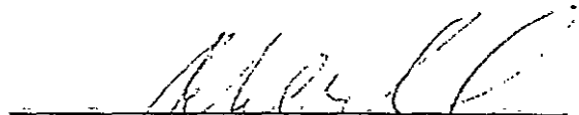
The Claimant is awarded return to his position on the seniority roster, but compensation for lost time is disallowed.

The Carrier shall comply with this Award within thirty (30) days from the date of this Award.

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 January 6, 1989.

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