

PROCEEDINGS BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1016

AWARD NO. 15

Case No. 15

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 terminated the seniority of MofW Repairman R. D. Heckathorn (System Docket CR-2408).

(2) The claimant shall be reinstated with seniority as a repairman unimpaired 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 which resulted from the Carrier's letter of March 3, 1986 which stated that the Claimant's seniority had been forfeited under the provisions of Rule 28

of the Schedule Agreement.

The record reflects that prior to the Carrier's March 3, 1986 letter the Claimant was restored from a June 18, 1982 dismissal by Public Law Board No. 3542, Award No. 23 (1-20-86) which stated that "...any future rule infraction of this or any other serious nature will result in his permanent dismissal from Carrier's employ." The reinstatement award provided that it should be implemented within thirty (30) days of its adoption.

Under date of February 6, 1986 the Carrier sent the Claimant a Certified Letter at his last known address advising him of Award No. 14 and that he should see a Carrier Physician on February 14 at 3:15 P.M. for a return to work physical. This letter was returned to the Carrier with a failure to deliver notice on February 12, 1986. Thereupon, the Carrier contacted the Claimant's Union Representative, who did not have the Claimant's then current address, but did have his phone number. The Carrier made phone contact with the Claimant, who provided his new mailing address, but stated that the papers need not be mailed to him as he would come in that day, February 12, 1986, and get them himself. The Claimant did what he said he would in the phone talk: he went to the Carrier's office that afternoon and picked up the paperwork (the Carrier's February 6, 1986 letter and the MD-40 Form) for a return to duty physical scheduled for February 14, 1986.

The Claimant made no further contact with the Carrier and did not appear for the return to duty physical on February 14. Nor did he phone to indicate that he would be unable to keep the

appointment for the physical, or request any postponement of his physical or modification of the Carrier's instructions on his return to duty.

The Carrier, as hereinbefore indicated, informed the Claimant by letter dated March 3, 1986, that he had forfeited his seniority under the provisions of Rule 28 of the Schedule Agreement.

After due study of the foregoing and of the whole record, inclusive of the submissions presented by the parties in support of their respective positions in the case, the Board observes that the record is lacking in information of a positive nature which indicates the reason for the Claimant's failure to accomplish the return to work physical and that, further, the Claimant was in process of being reinstated to service by virtue of Award No. 23 of Public Law Board No. 3542. Accordingly, the Board finds on the confronting record that the permanent loss of Claimant's seniority is inappropriate and that the proper disposition of the claim is to award the Claimant's reinstatement to the seniority roster.

Beyond this the Board observes that the record supports the Carrier's contention that no claim for compensation was made on the property in connection with the claim and that there is no basis for Board consideration of compensation for wage loss.

In view of the foregoing, and on the basis of the record as a whole, the Claimant will be reinstated to seniority without back pay.

1016-15

AWARD:

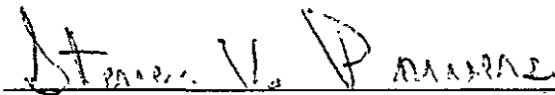
The Carrier within thirty (30) days shall reinstate the Claimant to the seniority roster. Compensation for wage loss is not allowed.

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

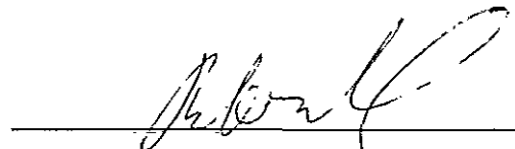
BY ORDER OF SPECIAL BOARD OF ADJUSTMENT NO. 1016



Fred Blackwell, Neutral Member



S. V. Powers, Labor Member



R. O'Neill, Carrier Member

Executed on March 2, 1989

Railway\1016-15.222