

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 261

Case No. 261
File 247-7006

Parties Brotherhood of Maintenance of Way Employees
to and
Dispute Union Pacific Railroad Company

Statement

of Claim: (1) Carrier violated the Agreement when it removed the name and seniority date of System Rail Gang Trackman P. J. Berry from the seniority roster effective March 8, 1984, when the Claimant failed to respond to recall.

(2) Claimant Berry should now have his seniority date restored and should have another opportunity to return to service under recall.

The Board has jurisdiction of this case.

Claimant was hired as a Maintenance of Way Trackman on January 14, 1976. He was terminated in the first 60 days of his employment under the provisions of Rule 12.

Subsequently, in 1980 a group of black employees filed claims of employment discrimination under 42 USC S 2000 E, et seq., which prohibits discrimination on the basis of race. The class action lawsuit was resolved by a Consent Decree. Thereunder, Carrier was obliged to offer employment to a certain number of former black employees whose employment applications had been rejected. Claimant's employment relationship was thus restored.

A formal recall letter, dated January 20, 1984, was issued recalling several former employees, including the Claimant, back to service. Said letter stipulated that:

"failure to return to service within seven (7) calendar days after recall for regular assignment...will forfeit all seniority in the class for which called."
(underscoring added)

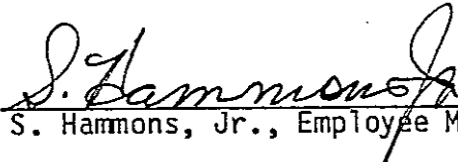
Claimant was advised under date of March 8, 1984 that:

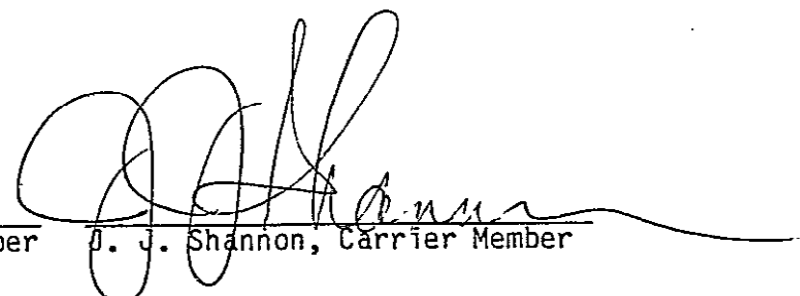
"In as much as you failed to report was directed your employment with Missouri Pacific is terminated and your name has been removed from the seniority roster."
(underscoring added)

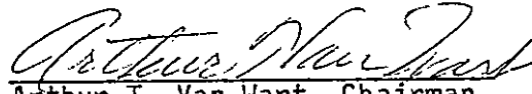
The Chief Engineer received a formal claim on February 19, 1985. That claim was filed on Claimant's behalf asserting that he was advised by a lady named Georgia on a Thursday that he had until the following Saturday to report to Houston and that he had not been given the seven days as required under the agreement.

This is not a claim that arises under the schedule agreement between the parties. Rather, Claimant's status arose as a result of the Consent Decree and he failed to comply therewith. Consequently, this Board has no jurisdiction. This claim is dismissed.

Award: Claim dismissed.


S. Hammons, Jr., Employee Member


J. J. Shannon, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued May 28, 1988.