

The Second Division consisted of the regular members and in addition Referee David P. Twomey when award was rendered.

Parties to Dispute: (System Federation No. 3, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Kansas City Terminal Railway Company

Dispute: Claim of Employees:

1. The the Kansas City Terminal Railway Company violated the Current Agreement when they did not properly recall Coach Cleaner Walter M. Browne from Furlough January 11, 1974 through March 22, 1974.
2. That accordingly the Kansas City Terminal Railway Company be ordered to compensate Coach Cleaner Walter M. Browne at his applicable rate of pay for all time lost, beginning January 11, 1974 through March 22, 1974 a total of fifty-one (51) compensated days.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

On January 4, 1974 the Carrier sent a letter, Certified Mail, to the Claimant, furloughed Coach Cleaner Walter M. Browne advising him of a vacancy for a Coach Cleaner in the Car Division. Carrier's Exhibit No. 7, an officially stamped Receipt For Certified Mail, demonstrates that the letter was properly mailed with postage prepaid in full as of January 4, 1974. On January 8, 1974, this Certified letter was returned by the Post Office to the Carrier unopened and receipt unsigned with stamped notations by the Post Office "Refused" "Return to Writer". There was no indication on the envelope that postage was due or that an attempt had been made to collect postage from the Claimant. (See Carrier's Exhibit No. 1) Mr. Browne did not report for duty within 10 days as required by Rule 24; and the Carrier sent a letter dated January 28, 1974, advising the Claimant that since he did not report within period required by Rule 24, the Carrier was removing his name from the seniority roster as per Rule 24. The Claimant wrote the Carrier a reply dated January 31, 1974, protesting his removal

from the seniority roster and requesting a formal hearing: the Claimant made no mention in this letter of any reason that he might have had for refusing the Certified letter of January 4, 1974. The Carrier's Acting Master Mechanic responded on February 4, 1974, to the Claimant's letter of January 31, 1974 in part as follows: "...I do not see that a formal hearing is necessary, however, if you care to drop by the office, during office hours, I will be happy to discuss the matter with you...." The Claimant did not choose to discuss the matter with the Master Mechanic as invited; and the Carrier still had no reason to know of a problem with postage due on the January 4, 1974 letter. The Claimant turned the matter over to the Organization and the Organization's letter of March 9, 1974, for the first time mentions a reason for the Claimant's refusal to accept the letter, that being that a postal employee advised the Claimant that 53¢ postage was due on the letter. A meeting was arranged by the parties on March 20, 1974, and in light of information of a Post Office error, the Carrier gave the Claimant 10 days to return from furlough. The Claimant returned to work on March 23, 1974.

The Organization contends that the Carrier's notice of January 4, 1974, did not constitute a proper notice in compliance with Rule 24 of the Agreement. The Organization also contends that the Carrier did not comply with Rules 27 and 28 of the applicable agreement in not promptly holding a hearing as to the cause and justification for the Carrier's removing the Claimant from the roster.

Rule 24 states:

"Employees furloughed on account of reduction in force who desire to retain their seniority rights must keep on file with the proper official, and the local Committee, their address, and renew same if changed. Failure to file or renew address or to report for duty within ten days after notice to return to work has been given will automatically sever their relations with the Company."

We find that the Carrier gave proper notice to the Claimant. Certified Mail, postage prepaid is a reasonable, and diligent manner of giving notice. Indeed such is the usual method of giving a notification for recall to service. Postal Clerk E. I. Foersler signed a document (Employee Exhibit A-9 Page 2) which states as follows:

"I feel that I am at fault that this has caused both parties so much trouble. I find that I took the letter in originally and failed to put the proper postage on the letter and didn't realize that I had done so until the letter went back to the sender. You did refuse the letter at the time stated but I was unaware then that I had not handled the matter properly. I hope that this clarifies what happened and why."

Clearly the mishandling of the letter of January 4, 1974, was the fault of the Post Office; and was not in any way the fault of the Carrier. The Carrier complied fully with Rule 24 and we can see no reason why the Carrier should be penalized for actions by the Post Office, over which it had no control whatsoever.

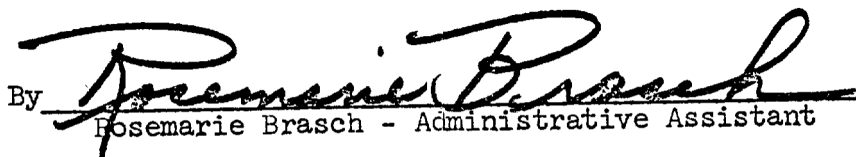
We find that the Carrier did not violate Rules 27 and 28 of the Agreement in not holding a hearing on the matter as requested by the Claimant in his letter of January 31, 1974. As stated in Rule 24 above, removal from the roster is "automatic"; and no hearing or investigation is required. Rule 24 is a self-executing rule providing for the automatic severing of relations with the Company. Rule 27 allows an individual who feels that he has been unjustly dealt with to take his case to the foreman or submit it to the authorized Committee. The Claimant chose to do the latter and his case was progressed accordingly. Rule 28, dealing with Investigations of suspensions or discharge is inapplicable to the present situation. Rule 28 is a discipline rule and the Claimant was not disciplined but automatically removed from the Carrier's roster under Rule 24.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 26th day of March, 1976.