

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. 99, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Firemen & Oilers)
(Illinois Central Gulf Railroad

Dispute: Claim of Employees:

1. That Laborer Isiah Hill, who was hired as a Laborer on October 26, 1964 and furloughed on November 4, 1969, and whose name was removed from the 1972 seniority roster, leaving a junior man on the seniority roster.
2. That accordingly Laborer Isiah Hill be given his original seniority date of October 26, 1964 and reestablish his vacation rights and all benefits due him.

Findings:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 October 26, 1969, the Claimant was hired as a laborer in the Carrier's Car Department at Mays Yard, New Orleans, Louisiana. The Claimant worked in this capacity for just over five years, until November 4, 1969, when he was furloughed. A one-day-per-week relief assignment was available at the time Claimant was furloughed. The Carrier contends that Claimant was verbally offered this assignment, but he refused it for personal reasons. A furloughed laborer, Mr. L. C. Robertson, who was junior to the Claimant accepted the assignment. During the month of February, 1973, the Carrier offered the Claimant employment as a laborer. The Claimant began work with a new seniority date of February 23, 1973, rather than his original seniority date of October 26, 1964. The Claimant now protests this new seniority date.

The Organization contends that even though the Claimant was furloughed for more than two years, part-time employment was available during the period, that is the above described assignment worked by L. C. Robertson; and the Carrier failed to give the Claimant written notice concerning the assignment resulting in the Claimant not being able to protect his original seniority date.

The Carrier contends that under Rule 28 of the Agreement, the Claimant lost his original seniority date. Further, the Carrier contends it verbally offered the relief assignment to the Claimant; and, notwithstanding the fact that the Claimant had lost his seniority, the Carrier on April 11, 1972, and October 10, 1972 offered the Claimant full-time employment on a regular basis which he declined for personal reasons.

Rule 28 states in pertinent part:

"When forces are increased, the employee will be notified and must return to service within ten (10) days. Failure to return to service, will result in loss of seniority unless the employee submits acceptable medical evidence that he is unable to return because of sickness. A letter or telegram addressed to the employee at the last address filed will constitute a proper return to work notice.

Employees with five and less than ten years' continuous service laid off in force reduction in excess of two years, and those with less than five years' continuous service laid off in force reduction in excess of one year, will lose their seniority rights." (emphasis added)

We find that Rule 28 makes clear beyond doubt that an employee who has five but less than ten years of continuous service will lose his seniority if he is laid off in excess of two years. This was the Claimant's status when he started his present position on February 23, 1973. We find that the Claimant was verbally offered the one-day-a-week assignment and we find that under Rule 28 the Company was not required to send the Claimant a written formal notice of recall when it offered this assignment. We find such an assignment did not constitute a force increase as contemplated within Rule 28.

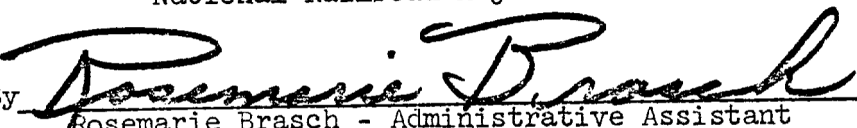
A W A R D

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.