

The Second Division consisted of the regular members and in addition Referee Robert A. Franden when award was rendered.

Parties to Dispute: (System Federation No. 97, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Electrical Workers)
(
(Atchison, Topeka and Santa Fe Railway Company

Dispute: Claim of Employees:

- (1) That the Carrier erred and violated the contractual rights to Mr. C. P. Fischer by failing to recall him to service.
- (2) That, therefore, he be recalled, and,
- (3) That he be compensated for all lost wages including overtime he would have worked, and,
- (4) That he be made whole for lost health and welfare benefits; retirement and unemployment benefits and for any other benefits he would have earned had he been properly recalled.

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 employees 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.

Claimant was on an authorized leave of absence in June of 1975 when a force reduction took place at Barstow, California where claimant held seniority as an electrician. Claimant was notified of the force reduction by registered mail. He failed to respond to the reduction notice by filing his address with the Carrier within seven days as required by rule 24(c). Claimant was further notified by registered mail on June 23, 1975 that he had been removed from the seniority roster. Additionally, Claimant did not file his current address with the Carrier in December of 1975 as required by the rule.

In June of 1976 employees who were junior in seniority to the claimant prior to his removal from the seniority roster, were recalled to service. This claim was filed on July 16, 1976 alleging a violation of the recall provisions of rule 24(d). Rules 24(c) and 24(d) read as follows:

"(c) Employees laid off in force reduction must, within seven (7) days of the date of notice of reduction, file their addresses with the officer in charge, in triplicate, on form to be provided for the purpose. The officer will sign and return one copy to the employee and deliver one to the Local Chairman of the Craft. Employee so affected must also advise the officer in charge of any subsequent changes in his address, and, in addition, notify him in writing of his current address between December 1 and December 31 of each calendar year, regardless of whether changed since last notice was filed. Employees failing to comply with either or both of these requirements for filing addresses and subsequent notices of change will result in forfeiture of seniority and right to recall to service.

This Section (c) shall not apply in the case of an employee who is force reduced in one classification and continues employment in another classification under the provisions of the Shop Crafts' or Firemen and Oilers' Agreements at the same location."

"(d) In restoration of forces, including advertised temporary vacancies, employees will be returned to service in the order of their seniority, if available, except as provided in Rule 19, within fourteen (14) days providing they are qualified to handle the work of the position to be filled. If not so qualified, the employee will stand by and the next furloughed employee will be called. An employee failing to notify officer in charge, within ten (10) days after notice of recall has been mailed to his last recorded address, of his intention to return to work will result in forfeiture of seniority and right to recall, unless proof of disability is furnished the officer in charge within said ten (10) days and unless such time is extended because of serious illness or injury. Employees left unplaced shall be considered off in force reduction but shall be subject to further call when additional men are needed providing they comply with all the requirements of this rule."

In that there is no dispute but that the claimant was properly notified of both the force reduction and his loss of seniority the issue in this case narrows to the question of whether the carrier failed in its obligations to provide claimant with an address registration form as called for in rule 23(c).

At the outset we must note that the issue of the Carrier's failure to mail the registration forms was raised for the first time during the handling

of this case. No such complaint was made at the time the Carrier notified the claimant that he was removed from the seniority roster.

The wording "on a form to be provided for that purpose" obviously places an obligation on the Carrier. As a matter of cause, the forms are kept in the office on the property and obtained by furloughed employees at that point. The question raised is whether because claimant was on a leave of absence the carrier was under an obligation to mail a form to Claimant absent a request from him to do so.

The procedure is not spelled out on this point, but it appears to the Board that, upon receipt of proper notice of furlough, there is at least a commensurate obligation on the part of the claimant to protect his rights by making a request for the form. The claimant has not made his case that the form was not provided by the carrier as called for in Rule 23(c).

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 10th day of February, 1978.

