

The Second Division consisted of the regular members and in addition Referee Dana E. Eischen 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 of Mr. W. E. Stagner by failing to recall him from his furloughed status.
- (2) That, therefore, Mr. Stagner be recalled and be compensated for all lost time and that he be made whole for all vacation rights, health, welfare and insurance benefits, Railroad Retirement and insurance and any other benefit he would have earned, including overtime, had he properly been recalled to service.

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 W. E. Stagner was employed as an Electrician at Carrier's San Bernardino Shops with seniority date of November 13, 1973. He was injured and took a medical leave of absence in May 1975. Another, Electrician, A. W. Teeters, was hired the same day as Claimant, November 13, 1973, but under a procedure of using alphabetizing as a "tie-breaker", Teeters listed immediately below Stagner on the January 1, 1975 seniority list.

In June 1975 Carrier reduced forces at San Bernardino and a number of employees, including Stagner and Teeters were laid off effective close of business June 2, 1975. Under date of June 5, 1975 Carrier sent to Claimant Stagner a letter reading as follows:

"Dear Sir:

As a result of force reduction, this is to inform you that you were laid off effective at close of shift, Friday, June 2, 1975, per copy of bulletin enclosed.

Please comply with Rule 24-C of your working agreement."

Claimant made no response to that letter. Therefor, under date of August 1, 1975 Carrier by letter, to Claimant, copy to his Local Chairman, advised Mr. Stagner as follows:

"Mr. Stagner:

Please refer to my letter June 5, 1975, informing you of force reduction.

Account failure to comply with Rule 24-C of Working Agreement, when laid off in force reduction June 2, 1975, and in order to be in compliance with Rule 24-C of the Agreement, this is to advise that your name is being removed from seniority roster at San Bernardino."

No response or reaction was received from either Claimant or the Organization when Stagner's name was removed from the seniority list.

From the record we may infer that Mr. Teeters complied with Rule 24(c) and his name remained on the seniority list. When the force at San Bernardino was increased on January 5, 1976, Teeters was called back to work. Claimant was not recalled and by letter dated February 11, 1976 this claim was initiated by the Organization on his behalf.

Rule 24, which is at the heart of this dispute, reads in pertinent part, 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.

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(d) In restoration of forces, including advertised temporary vacancies, employees will be returned to service in 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."

It is not refuted that Claimant failed to comply with the condition subsequent to his continued listing on the seniority roster under Rule 24, i.e., notifying Carrier of his address. The sole question presented on this record is whether his failure may be excused or justified by Carrier's failure to mail to him the address registration forms without being asked to do so. The Rule itself is silent or at best ambiguous on this point. On this record we have no evidence of practice or tradition to aid in discerning the intent of the parties. We are unable to conclude in the facts of this case that Carrier violated Rule 24(c) by not voluntarily mailing to Claimant the address registration forms. Perhaps it would have been a decent thing and a kindness to do so since the employee was off on medical disability but given the express Agreement language and the factual record before us we cannot conclude that it was a contractual obligation. Carrier advised Claimant to comply with Rule 24(c) but he exhibited not even a flicker of interest in doing so. His failure to file his address in June 1975 is not excused by Carrier's failure to initiate the mailing of his form. His failure to notify Carrier in writing of his current address in December 1975 remains wholly

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unexplained. Under the clear and unambiguous language of Rule 24 we have no alternative but to deny the claim. See Awards 7469, 4336 and 257 (Second); 20711, 17596, 15678, 12858 and 9457 (Third).

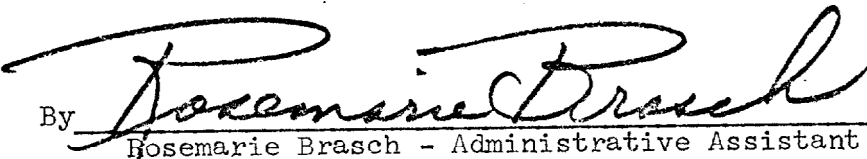
A W A R D

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 20th day of December, 1978.