Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 8397
Docket No. 8112
2-B&O-CM-'80

The Second Division consisted of the regular members and in addition Referee Abraham Weiss when award was rendered.

Parties to Dispute:
(System Federation No. 4, Railway Employes'
(Department, A. F. of L. - C. I. O.
((Carmen)
(
(Baltimore and Ohio Railroad Company

Dispute: Claim of Employes:

1. That under the controlling Agreement, the Carrier failed to recall Claimant, Harley A. Bennett to the service of the Carrier after he was furloughed in January of 1958 and subsequently became run around in seniority by junior employes.

2. That accordingly, Carrier be ordered to restore Claimant Harley A. Bennett to service at Clarksburg, West Virginia and his name be placed on seniority list ahead of any junior employe who has established seniority during the period of his furlough.

3. Claimant be allowed a retroactive seniority date for the time spent in military service and junior employes worked.

4. Claimant be compensated for all lost time and vacation and allowances be adjusted accordingly as though he had worked in the place of the junior employees.

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.

Claimant was hired on August 10, 1951 at Clarksburg, W. Va. He was furloughed from his position as temporary car inspector early in 1958 until 1962 when he was asked to take a temporary position as carman. Claimant declined the position, stating he wanted to be recalled only for a permanent position. In May 1977, Carrier enlisted the Carmen's Organization to locate Claimant to offer him temporary carman work. Claimant was located through information supplied by his parents and he started work on May 12, 1977. On May 27, 1977 Claimant filed the instant claim.

Claimant's employment record discloses he was hired as Carman Helper; left for military service; returned to Carrier's service as Carman Helper and was upgraded to temporary car inspector. On January 1, 1958, Claimant was returned to the status of Carman Helper, from which position he was furloughed shortly thereafter.

Petitioner alleges that Carrier violated Reduction in Force Rules 24 (c) and (g), which read:

> "(c) In reduction of forces, employes who so desire may waive their seniority rights in favor of a junior employe at that point. Such waiver shall be in writing and a copy furnished local committee."

> "(g) In the restoration of forces, senior laid-off men, including those who have waived their rights under paragraph (c) of this rule, shall be given preference in returning to service, if available, within 15 days. The local committee will be furnished a list of men to be restored to service."

Petitioner contends that Carrier was obligated to recall Claimant for any and all positions as "temporary mechanic"; that Claimant was living with his parents at the time he was furloughed in 1958; that he filed his address and maintained contact with both the Carrier and local Organization officers. Petitioner adds that Carrier contacted Claimant in 1962; hence, Carrier knew how to reach him.

Carrier argues that it was only obligated to recall Claimant for Carman Helpers' positions, and none was established subsequent to Claimant's furlough in 1958. When offered temporary Carman work in 1962, Claimant declined, stating he wanted to be recalled only for a permanent position. Moreover, Claimant filed no request for work under Rule 24(f) which states:

> "(f) Furloughed employes desiring reemployment in the restoration of forces shall keep the local management and the local committee notified of their immediate address."

Carrier also points out that Claimant "never filed a request under Article IV of the August 21, 1954 Agreement requesting relief work, or, in any manner ever request work of any nature, but that he stated in 1962 that he desired only permanent work. The fact is, Carrier states, no permanent work as a Carman Helper has become available since 1962 or since his return to work in 1977. Carrier adds that there has been no recall of Carman Helpers, "the only classification in which Claimant actually held seniority rights since his furlough in 1958". Even Claimant's return to duty in May 1977 was to a temporary position, not a permanent one.

Carrier asserts that following his furlough in 1958 Claimant did not file an address nor did he advise Carrier of his whereabouts, and in support, attaches confirming letters from Carrier's Car Foreman, from the Organization's Local

Chairman, and from the Secretary of the Organization's Local Lodge. Carrier points out that Claimant's parents, who, Petitioner contends, made frequent inquiries to local management, live approximately 100 miles from Clarksburg.

Carrier's defense, in short, is based on the following points:

1. Claimant did not file an address at the time he was furloughed.

2. Claimant failed to keep the Carrier (as well as his Local Lodge) advised of his current address.

3. Claimant did not request work under Article IV and never bid on or requested any position from the date of his furlough until May 1977.

4. Claimant declined an offer of work as temporary carman in 1962 stating he wanted to be recalled only for a permanent position. Claimant held seniority only as a Carman Helper and there were no junior Carmen Helpers recalled to service at Clarksburg since his furlough. Since 1962, no permanent jobs as Carman Helper or temporary Carman were created or filled. Claimant had no rights as temporary Carman.

5. Claimant's return in May 1977 was not to a permanent position but a temporary one.

6. Claimant's parents' address changed at least twice during the period in question and management was not notified.

The record discloses that Claimant was returned to work in 1977 only after the Organization's Local Chairman located Claimant by getting in touch with Claimant's parents. Petitioner acknowledges that both in 1962 and in 1977 Carrier was able to reach Claimant only by requesting the assistance of the Organization's Local Chairman.

This Board has on a number of occasions ruled that employees are responsible for providing management with information on their current address or change of address. Rule 24 (f) quoted supra in clear and simple language places the burden on furloughed employees to provide their current address both to "local management and the local committee".

Claimant has not met the burden of proof convincingly to demonstrate that he complied with such requirement, with respect to either local Carrier management or his local lodge. On both occasions when he was offered work opportunity following his furlough, local management had to call upon the officers of his local lodge to try to locate him, and the latter, in turn, had to contact Claimant's parents to learn of his whereabouts.

Based on the record before us, we find that Claimant failed to comply with the requirement of Rule 24(f); i.e., notifying Carrier of his address subsequent to his furlough. The Agreement places the responsibility of protecting seniority rights on the employee. In this instance, Claimant has not met such responsibility.

Petitioner alleges that in practice, Article IV of the August 21, 1954 Agreement "was not practiced or used on the property" until 5 or 6 years ago. Article IV provides, in pertinent part:

> "1. The Carrier shall have the right to use furloughed employees to perform extra work, and relief work on regular positions during absence of regular occupants, provided such employees have signified in the manner so provided in paragraph 2 hereof their desire to be so used ...
>
> 2. Furloughed employees desiring to be considered available to perform such extra and relief work will notify the proper officer of the Carrier in writing, with copy to the local chairman, that they will be available and desire to be used for such work ... Furloughed employees who would not at all times be available for such service will not be considered available for extra and relief work under the provision of this rule..."

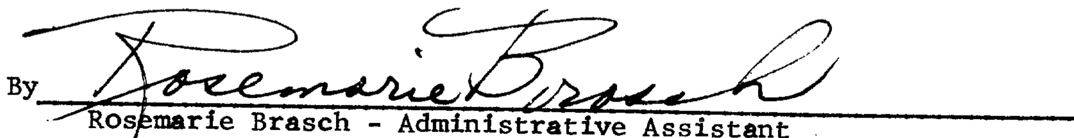
Claimant indicated that he would be available only for permanent work. Moreover, this Board has ruled in numberous decisions that a rule that is clear and unambiguous may be invoked by either party at any time notwithstanding any alleged prior practice to the contrary. Accordingly, we have no alternative but to deny the claim.

AWARD

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 23rd day of July, 1980.