

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 10462
Docket No. 10401
2-AT&SF-MA-'85

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

Parties to Dispute: (International Association of Machinists and Aerospace
(Workers
(The Atchison, Topeka and Santa Fe Railway Company

Dispute: Claim of Employees:

1. That the Carrier improperly dismissed Machinist J. M. Calhoun (hereinafter referred to as Claimant) from service on March 15, 1982.
2. That, accordingly, the Carrier be ordered to restore Claimant to service with seniority and service rights unimpaired with compensation for all wage loss.

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 employes 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.

The Claimant has been employed by the Carrier as a Machinist at its Diesel Shops facility located in Cleburne, Texas. He entered the service of the Carrier on August 27, 1978.

At the request of the Claimant, the Carrier granted him a leave of absence for a period of thirty (30) days, or until March 20, 1982, due to illness. On March 1, the Carrier sent the Claimant a certified letter advising him that he was placed on layoff status effective March 5, 1982. He was also sent address registration forms to execute and return in order to retain his seniority. The certified letter was delivered, and receipt acknowledged by the Claimant on March 2, 1982. On March 15, 1982 the Claimant was notified by certified mail that his name was being removed from the Seniority Roster due to his failure to file his current address within seven (7) days as provided in Rule 24(c). The letter was returned to the Carrier, "unclaimed" by the United States Post Office.

Rule 24(c) in relevant part, provides as follows:

"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. ***."

Rule 24(c) sets forth three (3) address registration requirements. The employee is required to file his address with the Carrier, (1) within seven (7) days of the date of the notice of force reduction; (2) when he changes his address; and (3) in December of each calendar year. Under Rule 24(c) an employee's failure to comply with one (1) or more of the address registration requirements results in a forfeiture of seniority and the right to be recalled to service.

Rule 24(b) of the Agreement provides that an employee who is absent at the time of layoff will be "notified by mail at the last address he has filed." It is undisputed that the Claimant was absent and that he was "laid off in force reduction". Moreover, he was "notified by mail at the last address he has filed." Accordingly, he was required to file his address, which he failed to do.

The Organization contends that the Claimant was taking medication during the period in question and should be excused from the address registration requirement of Rule 24(c). The Board does not find this argument meritorious. Dr. Alderman, the Claimant's physician, stated in a letter dated April 3, 1982 that the Claimant has been treated by him "for severe emotional stress" and that he (the Claimant) had been prescribed "very strong medication" during the period that he was required to file his address under Rule 24(c). However, the Claimant had seven (7) days within which he was required to file his address. Even if the medication the Claimant presumably had been taking, caused drowsiness, it is difficult to believe that such medication, in and of itself, would cause him not to return the registration requirements for seven (7) straight calendar days. Furthermore, the Claimant signed the receipt for the certified letter. By doing so, it is highly unlikely that he was in some way precluded from reading and understanding the notice.

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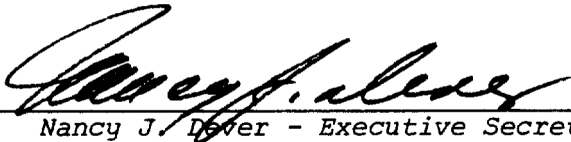
Second Division Award 7770, which involved the parties to this dispute states: "Under the clear and unambiguous language of Rule 24, we have no alternative but to deny the claim. See Awards 7469, 4336 and 257 (Second); 20711, 17596, 15678, 12858 and 9457 (Third)." Furthermore, it should be pointed out that this Board "cannot sit to dispense its personal brand of equity and industrial justice." It must apply and interpret the Rules as written. See Third Division Award 20711. Accordingly, the claim is denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 19th day of June, 1985