

The Second Division consisted of the regular members and in addition Referee Raymond E. McAlpin when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
(Consolidated Railroad Corporation

STATEMENT OF CLAIM:

1. Claim submitted by letter dated March 12, 1989 to the consolidated Rail Corporation on behalf of Electrician R. N. Tandy, Avon, Indiana as follows:

"Dear Mr. Tyler:

The Carrier violated the controlling agreement and in particular Rules 6-A-1(a), and 3-E-3 and 8-H-1(a) when they dismissed Electrician R. N. Tandy from service without a fair and impartial trial, when they arbitrarily removed his name from the seniority roster and violated at least one Federal law in the termination of Electrician R. N. Tandy.

We are requesting that Electrician R. N. Tandy be made whole for all losses in wages at both the regular and premium rates of pay, and all benefits including Railroad Retirement credits.

Bonified losses began August 18, 1987 and still continue at this writing.

Please advise us in print when Mr. Tandy has been put back to work and this claim has been paid in full."

and by letter dated February 22, 1990, as follows:

"Dear Sir:

This is a continuing time claim on behalf of Electrician Roger Tandy.

The Carrier violated the controlling agreement and in particular Rule 2-A-1.(f) when they failed to recall Electrician Tandy from furlough.

Time claim is eight hours at the premium rate per day, starting January 1, 1989 and continuing until Electrician Tandy is back to work."

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 were given due notice of hearing thereon.

The Claimant, an electrician at the Carrier's Avon, Indiana, location with a seniority date of August 14, 1979, was furloughed as of June 4, 1981. While on furlough status, the Claimant entered the military service in the U.S. Air Force on May 11, 1984, and served continuously until he was discharged on June 26, 1987. On July 28, 1987, the Claimant notified local management that he was returning from military service and inquired as to his status of employment. The Claimant was informed that on June 13, 1986, the Carrier sent a letter to the Claimant's official address of record recalling him from furlough, and this letter was returned to the Carrier unopened marked "addressee unknown." He has not responded to the notice recalling him from furlough, and since he had not kept the Carrier advised of his address change, his seniority had been terminated pursuant to Rule 3-C-6.

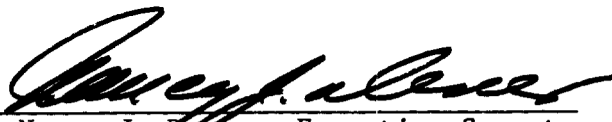
It is the Organization's position that the Claimant is entitled to the presumption that he had kept his employing officer advised of his new address since the Carrier communicated with him on two separate occasions at his new address before it issued its recall letter. Furthermore, the Claimant presented proof to the Carrier that he was returning from military status and that circumstances beyond his control, that is being on active duty, prevented his return pursuant to the Carrier's recall letter dated June 13, 1986. Therefore, Rule 3-C-6 supports the Claimant's position in this case. There are federal statutes which govern the rights of the Carrier's employees in returning from military service, and these override Agreement, practice on the property or any Rules of the Agreement or any other Rules which may be in conflict. In fact, Rule 8-H-1(a) pledged the parties to comply with federal and state laws. The claim has been presented in a timely manner and is in accord with the existing Agreement and statutes, and all the Carrier allegations have been refuted or denied.

If the Board is to respond to the arguments made by the Organization on behalf of the Claimant and the Carrier, there is a threshold issue which must be dealt with first. This is a claim that arises out of the Universal Military Training Act, a federal statute. This Board does not have the jurisdiction to interpret that statute. That is properly the venue of the U.S. Department of Labor, Office of Veterans Re-employment Rights and, indeed, the federal courts. Therefore, the Board will dismiss the claim and refer the Claimant to the appropriate tribunal.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: 
Nancy J. Bower - Executive Secretary

Dated at Chicago, Illinois, this 7th day of August 1991.