

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION

Award No. 12598  
Docket No. 12474  
93-2-91-2-283

The Second Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

(International Brotherhood of Electrical  
Workers  
PARTIES TO DISPUTE: (  
(Bessemer and Lake Erie Railroad Company

STATEMENT OF CLAIM:

"Claim and grievance submitted under date March 20, 1991, on behalf of Communications Department Electrician John W. Lowrey that he should not have been removed from the Communications Department Communications Maintainers, Lineman, and Groundman Rosters by the Bessemer and Lake Erie Railroad Company, Greenville, PA, as notified by Engineer Ojard by letter dated March 13, 1991."

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, a furloughed Carrier employee, held seniority on four separate rosters, Electronic Technicians, Communications Maintainers, Linemen, and Groundmen. On August 13, 1990, Bulletin No. 350 advertised a position of Electronic Technician. Claimant was mailed a copy of this bulletin. A week later, Claimant was sent a Certified Letter advising that he was being given written notice that he was being called back to work and that if he failed to return within fifteen days he would be considered out of service and forfeit his seniority. Upon receipt of the letter, Claimant discussed the recall with his Supervisor and expressed reservations

about returning to work since he was working in his own radio repair business.

A new employee was hired to work the vacant position. Carrier first notified Claimant that he had forfeited his seniority on the Electronic Technicians roster, but later advised that he had forfeited his seniority on all rosters. Carrier maintains that a forfeiture of seniority on all rosters is appropriate under the language of the sixth paragraph of Rule 23 (a), which specifically contemplates that an employee failing to return to service after being given notice will be considered out of service.

The Organization presents a number of arguments as to why it believes that Claimant should not forfeit seniority on those rosters for which the recall was issued. It also challenges the completeness of the recall notice, suggesting that it was deficient because it did not advise whether the job was for six months or more and that the notice did not address Claimant by occupation, etc.

Notwithstanding these objections, the Board concludes, as it has in a number of other cases, that the language of the sixth paragraph of Rule 23 (a) is self executing. The language of the Rule reads:

"In the restoration of forces, furloughed employees will be called back in the order of their seniority, and if they return to service within fifteen (15) days, they will retain their seniority. Furloughed employees failing to return to service within fifteen (15) days of notice given to them by certified U.S. Mail at their last known address will be considered out of service, unless prevented by sickness, disability or other good and sufficient reason."

It cannot be disputed that Claimant did not return to service within fifteen days after receiving notice of recall. Further, he was not prevented from doing so because of sickness, disability, or other good and sufficient reason. Thus, he was automatically considered "out of service" by the self-executing provision contained therein.

The parties used the phrase "out of service." "Out of service" must mean just that. It must mean more than a "forfeiture of seniority." If the parties merely intended that only the seniority on the roster covering the recall would be lost, such language could have been included in the Rule. It was not.

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Instead they chose language which would terminate the employee relationship. This Board is obligated to apply the language as written. Accordingly, the claim is without merit.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Catherine Loughrin  
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 13th day of October 1993.