

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. 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. C. C. Bishop when they removed his name from the Electricians' seniority roster at Bakersfield, California, and thereby denied him the right to recall.
2. That, therefore, Mr. Bishop's name be restored to the Electricians' seniority roster at Bakersfield, California, and
3. That he be compensated for all lost time and/or other benefits he would have received had not the Carrier erred in removing his name from the seniority roster.

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.

Carrier posted Bulletin No. 52 on September 15, 1976, which stated, "... the following employees (including Claimant C. C. Bishop) will be cut off at the completion of their shift which commences September 22, 1976."

Claimant's regular assigned shift hours are 11 p.m. to 7 a.m. As indicated by the bulletin, he worked his final shift commencing 11 p.m., September 22. At 7:05 a.m., September 23, he furnished the Carrier with his current address on the form provided by the Carrier.

Carrier rejected the address notice as untimely and advised the Local Chairman that Claimant had forfeited his seniority and the right to recall to service.

The Organization claims the notice given by the Claimant was timely and that there was no forfeiture of seniority by the Claimant.

In dispute is the meaning of Rule 24(c), which reads 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."

Both the Carrier and the Organization accept the interpretation that seven successive days are intended by the Rule 24 (c). The reasoning is precisely stated in Second Division Award No. 3545 (Bailer):

"The general rule (in law) is that the time within which an act is to be done is to be computed by excluding the first day and including the last, that is the day on which the act is to be done."

In this case, it is further understood that the "act to be done" (submitting an address) can be accomplished on any of the seven days in question. Following this interpretation, with the Bulletin posted on September 15, the employee was at liberty to present his address on any day between September 16 and September 22, inclusive.

The sole difference between the parties is the definition of the precise time that a "day" begins. Absent any restrictive word, the Carrier takes it as the seven calendar days following September 15 -- which would end at midnight, September 22. The Organization takes it as the seven days (including rest days, etc.) commencing with the start of the employee's shift, that is, the 24 hours commencing at 11 p.m., September 16. This would extend the seven days until 11 p.m., September 23, and the Claimant's giving of notice at 7:05 a.m., September 23 would thus be timely.

Careful examination reveals two flaws in the Organization's reasoning. First, it relates the time period to the employee's work schedule. As held in numerous previous awards, this may well have validity in such matters as overtime assignments, which may indeed be calculated to include availability, etc., in the 24-hour period commencing with the start of an employee's shift. But this would require Rule 24 (c) to be read as if it said that employees shall have seven days commencing with their shift on the day following notification of lay off; this the rule does not say. Rather, the seven days specifically refers to "the date of notice of reduction" and as such has nothing to do with the work schedules of affected employees.

Second, even if the Organization's theory of days beginning with the shift of the employee is accepted, the argument fails. The Claimant's first shift following the posting of the bulletin began at 11 p.m., September 15. On this basis, the seven-day period would end at 11 p.m., September 22.

There remains the consideration that the address notice was submitted by the Claimant only seven hours and five minutes beyond the limit, thus causing no inconvenience to the Carrier in its use for future recall to work. The Board, however, must read and interpret the Agreement as written and may not stretch or bend the rules. While this is true in all cases, it takes on special significance here, since the retention or loss of seniority rights of one employee inevitably affects the relative seniority rights of junior employees.

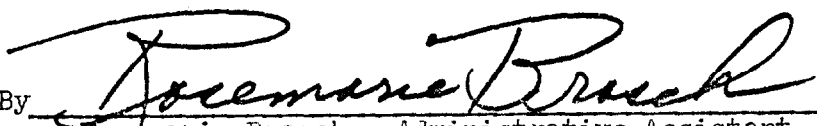
A W A R D

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 1st day of November, 1978.