

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

Parties to Dispute: (System Federation No. 16, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Firemen & Oilers)
(
(Norfolk and Western Railway Company

Dispute: Claim of Employees:

1. That under the current agreement Laborer Michael Leon Pharris was not properly recalled within the meaning and intent of the current agreement and further was not allowed to return to service when he did return for duty on August 2, 1976. This resulted in his loss of employment with the Norfolk and Western Railway Company.
2. That accordingly the Carrier be ordered to reinstate Laborer Michael Leon Pharris with seniority rights unimpaired, made whole for all lost wages, health and welfare and insurance benefits, vacation rights, Railroad Retirement benefits including unemployment and sickness benefits and any other benefits he would have earned had he not been unjustly held from the service of the Norfolk & Western Railway Company from August 2, 1976.

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.

The claimant, Michael Pharris, was employed by the Carrier on October 9, 1974, in their Car Department at Portsmouth, Ohio. The claimant was later furloughed due to economic reasons in 1976. On July 12, 1976, when the claimant was on furlough status the Carrier found it necessary to recall a laborer at Portsmouth. The claimant was the senior furloughed laborer. On July 12, 1976, the Carrier attempted to recall the claimant by telephone using the telephone numbers provided by the claimant. The first telephone number resulted in a response by the person answering, a Mrs. Pritchard, informing the Carrier that she had never heard of the claimant and did not

understand why her telephone number had been given. The second telephone number listed by the claimant as the number at which he could be reached did not contain any area code and could not be called because it was not a local number. On the following day, July 13, 1976, the Carrier sent a registered letter to the last address provided by the claimant. On July 17, this letter was returned unopened and stamped as unable to be delivered or forwarded. The claimant sought to return to work on August 2, claiming that he had not learned about his recall until that time. The Carrier informed the claimant that under Rule 14 his seniority rights had been forfeited. Rule No. 14, Reducing Forces, provides:

"In reducing or increasing forces, employees will be relieved from or restored to service according to ability and seniority. Employees will be given forty-eight (48) hours' notice before reduction is made.

When employees laid off by reason of force reduction desire to retain their seniority rights, they will file their address with the officer of the department notifying them of the reduction, and keep him advised of any change in same. Failure to do so or to return to service within a reasonable time after being notified will forfeit all seniority rights.

Employees not needed because of interruptions due to breakdown in machinery, floods, fires and the like, or other interruptions beyond the control of the Company, may be dispensed with without the regular forty-eight (48) hours' notice."

Understanding of Rule No. 14 -

"It is understood that the words 'reasonable time' mean within fifteen (15) days, unless special provision shall have been made with the employing officer."

The Board notes that Rule 14 imposes upon the employee the obligation to file his address with the Carrier and provides explicitly that the Carrier be advised of any change in address. Rule 14 expressly states that failure to do so will result in the forfeiture of all seniority rights. It appears that the claimant was visiting with his mother in Cincinnati at times relevant here. He failed to so inform the Carrier. The Carrier made all efforts required under Rule 14 to reach the claimant and his failure to receive the registered letter of July 13 was attributable to his failure to inform the Carrier of his whereabouts. Under all the circumstances the Carrier's action was proper and consistent with the provisions of Rule 14.

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Docket No. 7836
2-N&W-FO-'79

The issue raised by the Carrier as to time limits, in view of the Board's decision stated above on the merits, need not be considered. The Board's decision on the merits is supported by Second Division Award No. 7027 where the Board, under somewhat similar circumstances, found that notice by certified mail is a reasonable and diligent manner of giving notice and is the usual method.

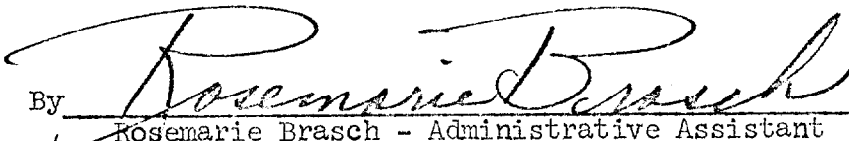
A W A R D

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 20th day of June, 1979.