

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

Parties to Dispute: (Clayton Hallmark
(Norfolk & Western Railway Company

Dispute: Claim of Employees:

- A. That under the applicable labor agreement, the claimant was improperly dismissed by carrier officer G. E. Rauh in his letter of August 17, 1981.
- B. That, accordingly, the carrier be ordered to:
 - 1. Rescind the G. E. Rauh letter of August 17, 1981.
 - 2. Nullify any actions that the carrier has taken or may take pursuant to the letter of August 17, 1981.
 - 3. Make the claimant whole with respect to any actions taken by the carrier or others pursuant to said letter.

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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 dispute has been submitted to this Board by an individual formerly employed in the Carrier's Signal and Communication Department. In his submission the Petitioner (claimant) has asserted many conclusionary allegations, predicated on other disputes that he had or now has pending with the Carrier. Conclusionary allegations may not be substituted for proof of a rule violation by the Carrier.

The present dispute had its origin in Carrier's notification, sent to claimant by Certified letter, dated July 2, 1981, by the Carrier's Regional Engineer, Signals and Communications, that claimant was recalled to service as a lineman on Communication Gang "C", and instructing him to report to the foreman of that gang on July 6, 1981.

The record shows that claimant was furloughed as a lineman on March 27, 1981, when his job was abolished. Paragraph (e) of Rule 11 of the applicable Agreement provides:

"In the restoration of force, senior furloughed employees will be given preference in being recalled to service and must return within 10 days from the time notified by Certified Mail Return Receipt Requested..."

The claimant did not report to the Foreman of Communication Gang "C" as instructed in the certified letter sent to him on July 2, 1981. The record shows that he did not respond in any manner to that notice. By certified letter dated August 17, 1981, the Regional Engineer, Signals and Communications, notified Claimant:

"Inasmuch as you did not report to duty as instructed in our letter of July 2, 1981, and, in fact, have not contacted the Carrier as called for in the rules of the current agreement, you have, therefore, forfeited any and all your seniority with the Norfolk and Western Railway Company."

The Carrier contended in the on-property handling that nothing was heard from claimant following the letter of August 17, 1981, until October 13, 1981, when the present claim was instituted, and that claimant wrote the Carrier on February 2, 1982, expressing a willingness to return to service in accordance with Carrier's letter of July 2, 1981.

The claimant protests the revocation of his seniority in the absence of a disciplinary hearing.

The Board finds and holds that that part of Rule 11(e) reading:

"...must return within ten days from the time notified by Certified Mail Return Receipt Requested..."

is mandatory. The failure of an employee to comply with the mandatory requirement of the rule, or give satisfactory reason for not doing so within the ten days, justified the revocation of claimant's seniority and employment rights. Further handling under any other rule is not necessary under such circumstances. See Awards 4546 and 4820, and Award 392 of Public Law Board No. 912.

The claimant has failed to prove a violation of the Agreement by the Carrier; therefore, the claim will be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Deyer Executive Secretary

Dated at Chicago, Illinois, this 9th day of May, 1984