

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

Parties to Dispute: (Mark T. Tartar
(Seaboard System Railroad

Dispute: Claim of Employees:

I was furloughed from the Seaboard Airline Railroad January 1, 1959. I have never received a recall notice as required by Rule 23 (b)* (See Exhibit L) even though I complied with the address requirements. It is my position that I am entitled to claim any position held by an employee with less seniority than March 20, 1951 and particularly the upgraded employees in Atlanta in the machinist craft. I also claim all wages lost for sixty (60) days retroactive from March 11, 1980 and continuous until I am restored to service with all fringe benefits associated with employment.

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 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 waived right of appearance at hearing thereon.

Claimant M. T. Tartar was employed by Carrier in its Howell Shop in Atlanta, Georgia, as a Machinist. He was laid off on January 1, 1959. Claimant obtained work in the Panama Canal Zone. In early 1960, he received a letter at his Panama address inquiring as to whether he would accept work at a location other than the Howell Shop. He responded that he would not, but that he would accept a recall to the Howell Shop. That was the last contact that he had concerning his job with Carrier until February 1980, when he got in touch with the General Chairman to inquire about his seniority rights with Carrier and about how he could obtain a job in Atlanta. It was subsequently learned that Claimant's name was removed from the seniority list in 1971.

Claimant argues that he was never recalled to service. As a consequence, he did not decline a job and his name should not have been removed from the roster. Claimant contends that Carrier violated Rule 23(b) of the Shop Craft Agreement:

"Rule 23(b)

In the restoration of forces, senior laid off men will be given preference in returning to the service, if available, within a reasonable time. Employees desiring to avail themselves of the privileges of this rule must file their addresses with their employing officer at the time force is reduced, and renew same at each change of address. Failure to comply with this rule, or failure to return to the service within ten days, after being notified by mail or telegram sent to the last address given, or give satisfactory reason for not doing so, will eliminate such employees from the service."

Carrier claims that any protests concerning the seniority list must be made within one year of the date the list is posted. No protest was lodged by either the Organization or Claimant concerning his name being removed from the seniority list until 1980, nine years after it was removed. Carrier relies on Rule 15(b) to support its position:

"Rule 15(b)

Seniority lists will be posted on bulletin boards which are provided for in this agreement, as soon as possible after January 1 each year, and will be considered permanently established if not protested during the year in which the roster is posted. Seniority dates not protested then become the fixed seniority for each man on the roster and will be carried forward to succeeding rosters. Only changes or additions as may have been made during the preceding year may be protested. Neither the Management nor the Committees will receive any complaints for correction of seniority dates which are not handled during the year in which the roster is posted. Copies of the seniority lists will be furnished the Local Chairman and General Chairmen at the time of posting on bulletin boards."

This Board has reviewed the record of this case and must conclude that Carrier did nothing improper in this instance.

Petitioner has presented no evidence to persuade this Board that Carrier did not properly notify him of a possible recall prior to removing his name from the seniority roster. Nor has any reason been advanced as a possible motive for bypassing Claimant for recall. Claimant was furloughed in 1959. He had correspondence with Carrier in 1960 and it was not until 1980, when the status of the Panama Canal Zone was to change, that Claimant inquired as to his seniority rights on the railroad.

It is inconceivable to the members of this Board that any man who was interested in his job rights with Carrier would not inquire as to recall possibilities once in 20 years. He certainly must have been aware of what was happening in railroad employment and especially in his home territory of Atlanta, Georgia.

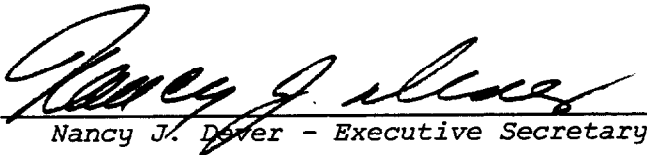
Carrier relied on the terms of Rule 15(b) of the Shop Craft Agreement denying the instant claim. This Board is in full agreement on that point. Rule 15(b) states that protest of a seniority list must be made within one year of the date it is posted. The protest on this case came nine years after the list was posted. This Board finds no substance to the Petitioner's claim in this instance.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 3rd day of October 1984.