

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

(Brotherhood Railway Carmen of the
(United States and Canada
Parties to Dispute: (
(Burlington Northern Railroad Company

Dispute: Claim of Employees:

1. That the Burlington Northern Railroad violated Rule 22(g) and 35 of the current Agreement when they withheld Carman J. N. McElwee from service from February 9, 1982 until February 26, 1982, at which time he was terminated as a result of formal investigation held on February 25, 1982. They further violated Rule 35, especially paragraph (a), when a "fair and impartial hearing" was not held.

2. That the Burlington Northern Railroad be ordered to reinstate Carman McElwee and pay him eight (8) hours for each work day at the pro rata rate commencing February 9, 1982 and continuing until he is returned to the service of the Carrier as a Carman, also that he be reinstated with his seniority and vacation rights unimpaired; made whole for all health and welfare insurance benefits; made whole for pension benefits, including Railroad Retirement and unemployment insurance and any other benefits that he would have earned during the time he was held out of service.

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 employes 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 J. N. McElwee was a Carman assigned duties at the Murray Yards, North Kansas City, Missouri. Effective January 21, 1982, Claimant was furloughed. At that time, he was permitted to take a five (5) day vacation. He received conflicting instructions that on the one hand indicated he had five (5) days and on the other hand fifteen (15) days from the end of his vacation to report to work at St. Louis to protect his seniority. He reported to work in St. Louis on February 9, 1982 and was informed that he had failed to exercise his seniority under the controlling Agreement and therefore he had no job.

A formal investigation was held on February 25, 1982, and the Claimant was informed by letter of February 26, 1982, that he would not be reinstated. The controlling rule in this dispute, Rule 22(g) reads:

"The exercising of seniority to displace junior employees, which practice is usually termed 'rolling' or 'bumping', will be permitted only when existing assignments are cancelled, in which case the employee effected may, within five (5) days, displace any employee his junior whose position he is qualified to fill. Each employee forced to exercise displacement rights at a point other than the one where he last worked will have up to five workdays from the close of the last shift at his old point to mark up at his new point, during which time he will be assigned work at the direction of the foreman."

A review of the record as handled on property shows sufficient evidence to warrant the conclusion that the Claimant was in violation of Rule 22(g). The Agreement is clear with respect to five (5) days and while this Board may sympathize with the Claimant, we are constrained to abide by the controlling Agreement. As such, this Board holds that the Claimant failed to fulfill his obligations with respect to the Agreement within the five (5) days and thereby forfeited his seniority rights. All other issues between the Parties are not addressed in that we have disposed of this matter in the above decision.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 25th day of September 1985.