

The Second Division consisted of the regular members and in addition Referee T. Page Sharp when award was rendered.

*(International Association of Machinists and
(Aerospace Workers
Parties to Dispute: (
(Burlington Northern Railroad*

Dispute: Claim of Employees:

- 1. That under the current agreement and the Burlington Northern, Inc. schedule of rules, the Carrier wrongly withheld Machinist F. D. White from service in furloughed status by denying him proper exercise of seniority rights from and continuing after June 21, 1981.*
- 2. That accordingly, Burlington Northern, Inc. recall Machinists F. D. White to service and compensate him for all time lost commencing on a date 60 days prior to April 7, 1982, the date of the instant claim, through the date of recall to 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.

On June 22, 1981, Claimant was displaced by a senior employee. He did not attempt to exercise his seniority. Under the 1981 Roster there was one employee junior to him and that employee was on furlough. When the 1982 Roster was posted he discovered that two other employees were junior to him which he could have displaced in 1981. He filed the claim stating that the Carrier wrongfully withheld him from service.

The Carrier denied the claim on several grounds, the first of which is that the claim is time barred. It alleges that the occurrence of the cause for claim, if any, was the date of Claimant's displacement.

Rule 34 (a) of the Agreement reads:

"(a) All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the Carrier authorized to receive same, within sixty (60) days from the date of the occurrence on which the claim or grievance is based. Should any such claim or grievance be disallowed, the Carrier shall, within sixty (60) days from the date same is filed, notify whoever filed the claim or grievance (the employee or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the Carrier as to other claims or grievances."

The Organization presented an equitable argument in that it states that the Claimant was unaware of the other junior employees. This argument is covered by Rule 26(a) of the Agreement which states:

"(a) Seniority lists shall be posted in the month of January of each year and they will be open for correction for a period of sixty (60) days from the date of posting of the seniority roster on which an employee's name first appears following date of employment, and no change will be made thereafter unless attention of Foreman has been called in writing to any error within the limitations provided herein. Typographical errors may be corrected at any time."

This Rule is unequivocal in its direction. Protest of the Roster must be made within a sixty-day period and must be called to the attention of Foreman in writing. This was not done and Claimant has no contractual right to protest before this Board.

Rule 34(a) sets the benchmark by which the period of limitation must be measured. It sets the period at sixty days after the occurrence. The occurrence was the date of the initial displacement and the period of limitations has long since run. We hold that the claim is not continuing and is time barred. For like effect see Third Division Awards 24023, 21322 and many others.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 4th day of December 1985.