

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

(International Brotherhood of Electrical Workers  
Parties to Dispute: (  
(Consolidated Rail Corporation

Dispute: Claim of Employees:

1. That the Consolidated Rail Corporation violates the agreement and particularly rule 3-C-5 since they failed to notify Electrician W. D. Hatfield, employee #685564, furloughed May 7, 1968, to return to work in October 1968, and have since employed electricians junior his seniority.

2. Accordingly, the Consolidated Rail Corporation (Conrail) be ordered to compensate and make whole W. D. Hatfield for all wages and other fringe benefits he would have earned had he been properly notified to return to service October 22, 1968, and further that he be properly placed on the Electricians Seniority District #14 Roster, and further that he is properly recalled to service from a furlough status and that this is a continuous claim to remain in effect until settled.

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.

This Claim is the result of a protest filed by Claimant to correct his seniority date as listed on a Seniority Roster posted January 31, 1982, at Carrier's Columbus, Ohio facility.

Claimant was hired March 20, 1962, as an Electrician apprentice on the former Pennsylvania Railroad. On November 16, 1962, Claimant was furloughed from the Pennsylvania Railroad. At the time of this furlough, Claimant had failed to work the required period of time (1,040 days) necessary to acquire seniority and right of recall.

On May 7, 1968, Claimant was hired as an Electrician by the Penn Central on the former New York Central property located at West Columbus, Ohio. On October 1, 1968, Claimant was placed on furlough status. The only evidence in Claimant's personnel file from this time period made part of the record contains an entry of his removal from service on October 22, 1968, due to his failure "to return to work on call."

The thrust of the Organization's position is that the Carrier failed to comply with the provisions of the current Agreement between the Organization and the successor to the Penn Central and New York Central, the Consolidated Rail Corporation ("Conrail"). Specifically, the Organization reasons that Claimant could not be bound by his seniority date of April 1, 1976, since Carrier failed to properly issue a recall notice by Certified Mail in October, 1968, in accordance with Rule 3-C-6 of the May 1, 1979 Agreement between the IBEW and Conrail. Although the Claim as presented alleged a violation of Rule 3-C-5, there is ample evidence the Parties proceeded during handling on the property under Rule 3-C-6. This Board will so consider the Claim as alleging a violation of the latter Rule.

The Organization states that the fact Claimant remained on furlough from October 1, 1968 to the filing of the instant Claim precludes a finding that the Claim is untimely under Rule 3-E-2 of the May 1, 1979 Agreement. Rules 3-C-6 and 3-E-2 state in pertinent part:

"3-C-6. Employees furloughed must keep their employing officer advised of any change in their current address. Employees failing to report for duty for positions expected to be of more than sixty (60) days duration, within fifteen (15) calendar days after a Certified U.S. Mail notice is mailed to the last recorded address, will forfeit all seniority, unless they present sufficient proof that circumstances beyond their control prevented such return."

"3-E-2. Rosters shall be posted, on bulletin boards provided for that exclusive purpose, in places accessible to all employees affected and shall be revised as of January 1st and posted in January of each year. An employee shall have sixty (60) calendar days from date his name first appears on the roster to appeal his roster date or relative standing thereon, except that in case of an employee off on leave of absence, vacation, sickness, disability, suspension or furlough, at the time roster is posted, this time limit shall apply from the date employee returns to duty."

(Emphasis supplied.)

The Carrier contends that Rules 3-C-6 and 3-E-2 have no application to the instant dispute which involve events that occurred in 1968. The Carrier emphasizes that due to Claimant's failure to answer recall in October, 1968, he forfeited all seniority as an Electrician and remained on the Electrician Apprentice Roster as a furloughed employee. The Carrier states Claimant's seniority date of April 1, 1976, was properly arrived at in establishing a new Regional Mechanics Seniority Roster based upon the date of conveyance, and with each employee, including Claimant, ranked according to the date he began his apprenticeship. The Carrier also argued that the Claim should be dismissed under the doctrine of laches.

The Board finds that Rules 3-C-6 and 3-E-2 do not apply to the instant dispute. The Board notes that Appendix "C" of the May 1, 1979 Agreement provides, except in specific circumstances not applicable to this case, for the termination of all agreements and all amendments, supplements and appendices to those agreements of the former component Railroads which comprise Conrail. The May 1, 1979 Agreement, is clearly the source of the contractual language with which to analyze a claim arising during that Agreement's effective dates. That Agreement would also provide the procedural method by which a claim or claims which accrued prior to the effective date could be raised, including the instant dispute. Claimant's substantive rights, however, must be determined in light of the applicable contract language in effect at the time his alleged right to recall accrued in October, 1968.

In search of the contractual language in effect on Carrier's property under the predecessor Railroad, the Board has examined two Agreements deemed applicable by the Parties. The first is an Agreement proffered by the Carrier between the New York Central Railroad, Michigan Central Railroad and the Boston and Albany Railroad and System Federation No. 103 of the Railway Employees Department, effective July 16, 1946 with revisions to July 1, 1951. Rule 27(e) of this Agreement states in pertinent part:

"In the restoration of forces, employees will be restored to service in accordance with their seniority if available within a reasonable time and shall be returned to their former positions if possible providing they have not in the meantime exercised their seniority rights on permanent positions under Rule 18. The local committee will be furnished with a list of employees to be restored to service."

A Note to Rule 27 provides in part:

"Where vacancies or temporary positions are expected to be open to furloughed men for 60 days or more, senior qualified furloughed men must respond to call within a reasonable time or lose their places on the roster ...."

The Organization submitted for consideration another Agreement between the New York Central Railroad - Southern District and System Federation No. 54, including the Electrical Workers, effective October 1, 1923, with revisions to January 1, 1966. Rule 24 of this Agreement contains language virtually identical to Rule 27(e), but without the language quoted from the Note, above.

This Board concludes, regardless of which of these two contracts is properly applied, that the Claimant at the time of his furlough and recall in October, 1968, had neither the benefit of Certified Mail service for purposes of recall, nor the extended grace period afforded furloughed employees under the May 1, 1979 Agreement to challenge their Seniority Roster dates or standing thereon.

Finally, our finding that Claimant's furlough and alleged recall in 1968 did not afford him the contractual rights currently within the scope and application of the May 1, 1979 Agreement does not prohibit our determination that his neglect in asserting the present Claim for almost fourteen years from the date of his furlough is barred by the doctrine of laches. The difficulty presented to the Parties and this Board in its inquiry into the proper contractual language which pertained to Claimant's alleged right of recall in 1968, manifests the staleness of his demands. The Carrier and the Organization itself relied on the Claimant's present seniority date for many years. There is no evidence in the record that at any time during the years between Claimant's furlough in October, 1968, and his protest of February 18, 1982, that he made any inquiry as to his furloughed status and/or seniority date. Claimant's neglect for such a lengthy period of time, which neglect is not otherwise shown to be justified, compels this Board to find that Claimant had constructive knowledge of his loss of seniority and assignment of seniority date, and acquiesced in same.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest.

  
Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 29th day of October 1986.