Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 11081
SECOND DIVISION Docket No. 10876
2-SP-CM-'86

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

Parties to Dispute: (Brotherhood Railway Carmen of the United States
(and Canada
(
(Southern Pacific Transportation Company
((Eastern Lines)

Dispute: Claim of Employes:

1. That the Southern Pacific Transportation Company (Eastern Lines) violated the controlling agreement, particularly Rule 24, when Carman M. G. Moss was not permitted to return to service after finding out he had been recalled account Post Office failing to deliver Carrier's certified letter notifying him to return by January 15 1984, Houston, Texas.

2. That accordingly, the Southern Pacific Transportation Company (Eastern Lines) be ordered to compensate Carman M. G. Moss in the amount of eight (8) hours per day, five (5) days per week beginning January 15, 1984 until he is properly restored to service with all seniority rights, vacation rights and health and welfare benefits.

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.

By letter dated January 5, 1984, Claimant was notified in accordance with Rule 24 of the Agreement that he was recalled to service. That Rule in pertinent part states:

"Employes who are laid off in reduction of force must file their address...and must... advise of any subsequent

change in their address. Those... who fail to return to service within ten (10) days after being notified (by mail... to the address last given)... will forfeit all seniority rights."

Claimant argues that the Post Office failed to deliver the letter and as such, he was unaware of his recall. During the progression of this Claim on property, Claimant also argued that the Post Office had failed to leave Notice of the attempt to deliver Certified Mail. In support of non-delivery, Claimant notes first that the apartment was always occupied by an invalid who would have been available to accept the letter. Claimant also provides written substantiation from a Postal authority that errors in notification of attempted delivery are possible. Failing to receive said Notice or Certified Letter, Claimant maintains his forfeiture of seniority is violative of the Agreement.

It is the Carrier's position that the Claimant was duly notified in full compliance with the Rule. With respect to said incident this Board's review of the record at bar substantiates Carrier's position. There is sufficient evidence of record that a Certified Letter was sent to the Claimant's address on file with the Carrier. The undeliverable Certified Mail returned to the Carrier indicates three unsuccessful attempts at delivery were made on January 6, January 11, and January 21, 1984. The Board considers it highly unlikely given the probative evidence at bar that the U.S. Postal Service failed on three occasions to make Certified delivery and also to leave Notice of attempted delivery of said mail. Under Rule 24 of the Agreement, the Carrier was required to notify the Claimant by mail. It did so. The evidence of record supports Carrier's compliance with the Rule.

In view of the record before this Board wherein the only dispute is whether the Claimant received the letter, we must deny the Claim. There is no dispute on property that the Carrier sent a proper recall Notice to the Claimant's last known address by Certified Mail. Evidence of attempted delivery substantiates that fact. Following such procedure is all that is required by this Board to constitute constructive and proper Notice (Second Division Awards 8736, 8381 and Third Division Award 24129). Since there is no evidence of a Carrier violation of the Rule and since Rule 24 contains a self-activating provision forfeiting seniority rights under these conditions, this Board must deny the Claim.

A W A R D

Claim denied.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 3rd day of December 1986.