

The Second Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers  
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(Burlington Northern Railroad Company

STATEMENT OF CLAIM:

1. That in violation of the Agreement, the Burlington Northern Railroad capriciously failed to provide Communications Crew Lineman J. V. Patterson the information necessary for him to place himself on another position after the position he was holding was abolished. As a result, Lineman Patterson became furloughed while an employee junior to him continued his employment with the Company.

2. Accordingly, the Burlington Northern Railroad should be instructed to compensate Lineman Patterson in an amount equal to all wages, including overtime, worked by the junior employee; the Burlington Northern should be further instructed to make Mr. Patterson whole for all other losses suffered by him including insurances, paid vacation and so on.

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 April 17, 1985 a Claim was filed on grounds that the Carrier was in violation of Rules 12 and 22 of the Schedule Agreement. The facts of this Claim center on the Claimant's contention that a junior lineman working a temporary assignment was not furloughed until the latter part of March, 1985 whereas the Claimant had been furloughed on March 7, 1985. According to the Claim, when the Claimant made inquiries at the Chief Engineer's office in Overland Park, Kansas on the day after his furlough, he was told that there were "no linemen working who were junior" to himself. The Claim was filed with the Denver Region Chief Engineer W.H. Ferryman, at the Carrier's offices in the Executive Tower, 1405 Curtis Street, Denver, Colorado. The Claim was not answered by the Carrier. On August 20, 1985 a second Claim was filed with

the Denver Region Chief Engineer, at P.O. Box 17150, 1331 Seventeenth Street, Denver, Colorado. This second Claim requested forfeiture of earlier Claim filed on April 17, 1985, because of violation by the Carrier of Rule 29(a) of the Agreement. This second Claim also included request for supplementary relief since it "...c(a)me to the attention (of the Organization) that (the junior electrician cited in the original claim)...was not furloughed on March 26, 1985, as (the Organization) was originally informed." According to this second Claim the junior Electrician continued working while the Claimant was on furlough. The Claimant was recalled to service on July 15, 1985. Relief requested for the first Claim was, therefore, for pay from March 7-27, 1985; relief requested for the second Claim was for pay from March 28-July 14, 1985.

On September 11, 1985 Chief Engineer J. G. Wood, to whom the second (August 20, 1985) Claim was directed responded that the first Claim had never been received because it had been sent to the wrong address. According to the Carrier, that Claim was sent to an address "which had not been occupied by the Carrier since May of 1984." Since that Claim has never been received, according to the Carrier, and since the August 20, 1985 Claim "exceed(ed) the sixty (60) day period specified in IBEW Rule 29" both Claims were denied because they had not been filed within required time limits. In rejecting this denial of its Claims the Local Chairman states that a certain Carrier officer by the name of Don Phillips told him "on the phone" that he had recalled seeing the claim but "couldn't find it." In subsequent correspondence on appeal the General Chairman states that the Carrier had been making frequent changes of its offices (as well as its line of appeals) yet it had failed to "give (the) Organization updated and complete revisions." With respect to the second Claim, the Organization argues that it was a continuing Claim and on the basis of Rule 29(d) was properly filed.

The Board observes that the Carrier does not deny on property that someone in their offices told the Organization Representative that the Claim had been received. The statement made by the Organization Representative cannot be construed to be only one of self-interest, therefore, since no affirmative defense was developed by the Carrier to permit conclusion that it was such. Secondly, this Board finds reasonable the position of the Organization that its officers cannot know the correct address to send Claims to if the Carrier does not inform them of changes of office addresses when such takes place. The Board does not deny that Organization officers must keep their files correct and up-to-date. It is unclear how this can be done, however, without information provided to them by the Carrier. Further, such line of reasoning is supported by the silence of the Carrier on this question. It never states that it had tried, or that it has actually forwarded, the new address in question to the Organization. The procedural objection raised by the Carrier with respect to the first Claim filed on April 17, 1985 is dismissed.

The second Claim filed on August 20, 1985 was rejected by the Carrier on procedural grounds because of "alleged misinformation" going back to March 8, 1985. In its November 18, 1985 correspondence to the Organization the Carrier admits that the misinformation given to the Claimant was more than alleged. At this later point in the handling of this Claim on property the Carrier calls the information given to the Claimant "incomplete." The Carrier argues, however, that the correction of such incompleteness was the responsibility of the Claimant. The General Chairman's response to this is as follows. He states: "(I)t is correct" that the Claimant relied on information given to him by the Carrier in March of 1985 because "(t)here is no other method whereby employee(s) can determine where employees junior to (them) are working." According to the General Chairman, "(t)his is why (the) Carrier employes someone...who keeps accurate records of employees." The Board is persuaded that the arguments presented by the Organization on this issue are the more reasonable. Evidently the Claimant could not exercise seniority rights without correct information related to these rights. The accuracy of this information must necessarily be found in the Carrier's records. The Claimant made attempts to inform himself. He was given "incomplete" information as the Carrier states. In this instance the difference between incomplete and incorrect is academic. When the Claimant filed the first Claim he was told that the junior Electrician was furloughed on March 26, 1985. It was apparently when he was recalled on July 15, 1985 that he discovered that this junior Electrician had continued working up to that date, at least. The Claim filed on August 20, 1985 was, therefore, within sixty (60) days of when this latter information was reasonably available to the Claimant. While the second Claim is not a continuing Claim as the Organization states, liability associated with it is continuing (within the time-frame in question). The procedural objection raised by the Carrier with respect to the August 20, 1985, claim is also dismissed.

The Board will, therefore, rule on the merits of both claims. The Rules at bar read, in pertinent part:

"Rule 12

(b) An employee losing a position through no fault of his own will exercise seniority on a position held by any junior employee in the same or lower classification wherein he holds seniority. The junior employee thus displaced will be privileged to exercise seniority to a position held by any junior employee in the same or lower classification wherein he holds seniority.

(c) An employee losing a temporary position through no fault of his own may return to his regular assignment or he may displace any junior employee holding a temporary position."

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"Rule 22

(a) When it becomes necessary to reduce expenses, the force will be reduced, seniority as per Rules 12 and 25 to govern, the employees affected to take the rate of the job to which their seniority entitles them. Employees exercising seniority under this rule, will receive a day's time for each day of traveling, at the rate of pay for the position they are leaving, actual necessary expenses en route, automobile mileage established at the Carrier's current rate, and free rail or other transportation as authorized for dependent members of their families and household goods. The Carrier shall determine the manner in which household goods shall be moved, except that it shall not be by freight car. They will receive the rate of pay for the new position from the time they actually start work thereon."

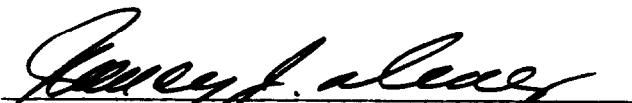
The record shows that the Claimant's seniority date is April 14, 1980. That of the junior Electrician who worked while the Claimant was on furlough from March 7, 1985 through July 14, 1985 is October 16, 1984. Both held temporary crew lineman positions when the Claimant was furloughed on March 7, 1985. This information is found on the crew lineman roster of January, 1985 and the seniority dates in question are also stated in the first claim filed by the Organization on April 17, 1985. The Claimant's seniority under the Rules cited clearly gave him prior work rights. Such, in fact, is never denied by the Carrier on property. Absent sufficient reasons to deny the instant claims on procedural grounds, therefore, they must be sustained on merits. The Claimant shall be compensated at pro rata for all days he could have worked from March 8, 1985 up to and including July 14, 1985. Additional benefits explicitly provided for in the Agreement shall also be paid to the Claimant, if any, for the time-frame in question.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 8th day of February 1989.