

NATIONAL RAILROAD ADJUSTMENT BOARD

TBIRDDIVISION

Award Number 20480
Docket Number MW-20519

David P. Twomey, Referee

PARTIES TO DISPUTE: { **Brotherhood of** Maintenance of Way **Employees**
(**Norfolk and Western Railway** Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it failed and refused to recall furloughed Section Laborer B. W. Revelle on February 22, 1972 but assigned junior furloughed Trackman F. L. Bauerle to section laborer's position on Section 16 at Edwardsville, Illinois (System File MW-CTN-72-1).

(2) Claimant B. W. Revelle be allowed pay at the section laborer's rate of pay for all time lost beginning on February 22, 1972 up to the date claimant begins working on his seniority district.

OPINION OF BOARD: The Employees contend that the Carrier violated the Agreement when it failed to recall the Claimant, a furloughed employee and assigned a junior furloughed trackman to a position at Edwardsville, Illinois.

The Carrier contends that the retention of seniority notice filed by the Claimant was deficient in that it did not contain the Claimant's address.

The pertinent provision of the Agreement, Rule 5(a) reads:

"Rule 5.--Retention of Seniority in Force Reduction.

(a) Employees laid off by reason of force reduction desiring to retain their seniority, must file with their superior officer, a written statement indicating their desire, and setting out their address."

Claimant was furloughed on October 15, 1971. Claimant filed a written statement with his superior officer concerning his desire to retain his seniority and he set forth his address, "Madison, Illinois." On January 26, 1972 three track laborer positions on Section 16, Edwardsville, Illinois, within Claimant's seniority district, were advertised and filled on February 10, 1972. One of the positions was filled by a track laborer junior in point of seniority to Claimant. On February 22, 1972, Claimant reported to the headquarter 6 of Section 16 and sought to displace the junior employee. This was denied. The General Chairman contacted the Carrier on about March 28, 1972 and the Carrier made immediate effort to advise Claimant to report to work, which he did.

We find that the Claimant had **satisfactorily fulfilled** the requirements of Rule 5(a) and that the address "Madison, Illinois," minimally satisfies the address requirement. The Burden of Proof then was on the carrier to send a recall notice to the Claimant, and **if** the address given by the **Claimant** in fact **turned** out to be non-deliverable, the Carrier could no doubt have **terminated** the Claimant's **seniority**. However, Carrier made no effort to contact **Claimant** and thus violated the **Agreement**. The claim is sustained.

FINDINGS: The Third **Division** of the Adjustment Board, **upon** the whole record and all the evidence, finds and holds :

That the parties waived oral hearing;

That the Carrier and the **Employees** involved in this dispute are respectively Carrier and **Employees within** the **meaning** of the Railway **Labor** Act, as approved **June 21, 1934**;

That this Division of the Adjustment **Board** has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

A W A R D

Claimant B. W. **Revelle** be allowed pay at the section laborer's rate of pay for **all** time lost beginning on February 22, **1972** up to the date claimant began working on his seniority district.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, **this** 25th **day** of October 1974.