

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21833
Docket Number CL-21915

Herbert L. Marx, Jr., Referee

PARTIES TO DISPUTE: { Brotherhood of Railway, Airline and
{ Steamship Clerks, Freight **Handlers**,
{ Express and Station **Employees**
{ **Chicago, Milwaukee, St. Paul and Pacific**
{ **Railroad Company**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
GL-8266, that:

1) Carrier violated the Clerks' Rules Agreement at Chicago, Illinois when it unjustly treated B. M. Matuk by **advising** him he **had** forfeited his seniority by failing to file his **name and** address when furloughed, when in fact he complied with provisions of the Agreement in that respect.

2) Carrier shall now be required to rescind the notice issued to B. Matuk, restore his seniority date, **and** pay him for **all** time lost; reparation to be determined by a joint check of Carrier's records.

OPINION OF BOARD: **Employee B. M. Matuk, with** seniority date of October 22, 1971, was properly furloughed on January 7, 1975, through written notice from J. P. **Kalasmiki**, Agent, on behalf of the Carrier. Foreman **Louis M. Rosenmayer** proffered Matuk the form required to record his **name** and address to insure **maintenance** of his seniority status for purpose of recall to work. **Matuk** completed the form and returned it to Rosenmayer. Evidence indicates that this procedure was followed on a number of previous occasions. Rosenmayer's practice was to send such forms to Agent **Kalasmiki**, the proper Carrier official for such purposes, but by his own admission Rosenmayer failed to do so in this instance.

Subsequently, Matuk **was** recalled by the Carrier (through Foreman **Rosenmayer**) for "**extra work**" (**as** Rosenmayer described it) in January, February and March, 1975, as a furloughed employee.

By letter of September 2, 1975, Matuk was advised by Agent **Kalasmiki** that he had "failed to file your name **and** address after being furloughed on January 7, 1975" and that therefore "you have forfeited **all** seniority rights in Seniority District 31." Of some interest is that Foreman Rosenmayer retired on June 30, 1975.

Following a hearing **and** further correspondence, the Carrier advised the Organization, by letter of December 23, 1975, that **Matuk** had been "rehired effective January 17, 1975, (his current seniority date in District **31**).".

The question at issue before the Board is an extremely narrow one: Is **Matuk's** proper seniority date October 22, 1971, as claimed by the Organization, or **January** 17, 1975, as claimed by the Carrier?

Carrier relies entirely on the **literal** wording of Rule 12 which reads in part:

(b) **Employees** desiring to protect their seniority rights and avail themselves of this **rule** must, within fifteen (15) days from date actually reduced to the furloughed list, file their **name** and address, in duplicate, with the proper official (the official authorized to bulletin **and** award positions) in **all seniority** districts in which they hold seniority and advise of any change in address within 30 days thereof. **Failure** of **an** employe to file his **name** and address in accordance with this paragraph **will** cause him to forfeit all seniority rights in the district in which he **fails** to do so, except in case of sickness or personal injury to himself or an immediate member of his **family**. The official **shall** sign and return to the employe as his receipt one copy of the address or **change** in address so filed.

After having filed his **name and address** within (15) days from the date actually reduced to the furloughed list, it is not again necessary for an employe to file his **name** and address following the performance of extra work while he is on the furloughed list, unless there is a **change** in the address.

Matuk did not file his **name** and address in person with Agent **Kalasmiki**. Had the Carrier acted promptly on this failure, Matuk would have lost **all** seniority and would not have been eligible for extra service **from** January 22, 1975 -- 15 days **after** his furlough. Taken by itself **and** without other circumstances, this would have effectively lost **all** seniority for **Matuk**.

This, however, does not take into account what **actually** happened. First and foremost, Matuk did fill out the necessary form and, as he had done in the past, relied on Foreman Rosenmayer's implied assurance that the

form would be **forwarded** to Agent **Kalasmiki**. Indeed, if the form had been so transmitted, Carrier's witness testified **that this would** have been sufficient. As stated to Agent **Kalasmiki** (Hearing **Question 52** and Answer), "I have accepted signed forms from employees of the Candy **House** personally through **Mr. Bishop** and also as tendered by **Mr. Rosenmayer** as intent of the form is quite clear regardless of who handles it." (Emphasis added)

Further, the evidence is less than clear as to **whether Matuk** -was **recalled** as a "furloughed" **employee** in **January-March** (indicating that the Carrier had constructively accepted him in such status) or was "rehired" on **January 17, 1975** and then "**inadvertently**" left off the seniority lists of **July 1975** and **January 1976** (Carrier's letter, **May 16, 1976**). It is reasonable to assume that **Matuk** believed he was **recalled** for extra work as a furloughed employee **and** thus in compliance with Rule 12.

Carrier's letter of **September 2, 1975**, appears to be a retroactive **enforcement** of a procedure which had heretofore been waived by the Carrier. The Carrier at its option may require specific compliance with Rule 12, but can hardly penalize employees while it permits one of its **representatives** (in this case, Foreman Rosenmayer) to encourage use of the Foreman as a conduit for compliance. The insistence of strict adherence to a **rule** where actions of two parties are involved requires such compliance by **all** concerned.

The remedy sought by the Organization, as detailed in **paragraph "2"** of its Statement of Claim, is reasonable under the circumstances and **will be applied**.

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**

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That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 6th day of January 1978.

