

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number **22205**
Docket Number CL-22243

Joseph A. Sickles, Referee

(Brotherhood of Railway, Airline and
(Steamship Clerks, **Freight** Handlers,
(Express and Station **Employes**

PARTIES TO DISPUTE: (
(Chicago and North Western Transportation Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8480) that:

1. Carrier violated the current Agreement Rules, particularly Rule 12, when under date of **April** 12, 1976 it notified Mr. H. C. Roberts, Claim Investigator in the Auditor Freight Rate Claims Department, that he had forfeited his seniority in accordance with the provisions of Rule 12 and 24 (**b**) account not exercising his seniority within fifteen days from the date he **was** affected by the loss of his position.

2. Carrier shall be **required** to reinstate the seniority of Mr. H. C. Roberts, with all rights unimpaired, and compensate **him** for all time lost from April 12, 1976 forward until such time as the violation is corrected. Such **re-imbursement** to include losses in connection with all fringe benefits.

OPINION OF BOARD: The Claimant had been **removed** from his position and had served a suspension from service. The suspension expired as of **12:01** a.m. on March 28, 1976 and, under Rule 12, the Claimant was required to take certain actions to protect his seniority and **employe** status within fifteen (15) days of a designated date.

It appears that on March 29, 1976, the Claimant had a discussion with a Carrier Official for the purpose of applying seniority, but there is no indication of record that anything was accomplished at that **time**. In any event, the Claimant appeared before a Carrier Official on April 12, 1976, for the purpose of applyiig seniority. He was denied that opportunity and on the next day he was notified that the **employment** relationship had been severed.

No purpose is served by a **recitation** of the entirety of **Rule** 12, Suffice it to say that, under certain circumstances, an

employee is required to file his **name** and address within fifteen (15) calendar days from the date affected and:

"Failure to file such name and address and advice of any change will result in forfeiture of all seniority rights."

The **Organization** asserts that the Claimant became eligible to apply seniority effective March 28, 1976 and the ultimate issue in this case hinges upon whether the fifteen (15) day time limit provision of Rule 12 **commenced** as of March 28 or March 29, 1976. If, of course, it started on March 28, then it expired as of the close of business on April 11, 1976, and the Claimant's action was beyond the fifteen-day period. If, on the other hand, March 28, 1976 is not to be counted as one of the calendar days applicable to the fifteen-day limit, then the time limit did not expire until the close of business on April 12, 1976 and the Claimant had taken appropriate action prior to the time that he would have forfeited seniority.

The Claimant has cited Awards of this Board in support of its contention that the first date that a time limit is invoked is not applied as a calendar day but that the day on which the time limit expires is counted **as** a calendar day.

The Carrier argues that the disciplinary suspension ended on March 27, 1976 and, noting that **employees** must exercise certain rights within fifteen calendar days from the date affected, the Carrier urges that because the suspension ended on March 27, 1976 and **12:01** a.m. March 28, 1976 was the first time at which he could submit a bid, the fifteen day period ran from March 27. However, of significance to this dispute, at Page 3 of its Ex Parte Submission to this Board, the Carrier concedes that:

"...The first day is not included in computing the fifteen days..."

That concession, plus Carrier's Exhibit "**C**" disposes of the dispute. In Carrier Exhibit "**C**", the Manager-Personnel states that the:

"...disciplinary suspension which culminated at **12:01** a.m. on March 28, 1976."

Thus, when one eliminates the first day, it is obvious that the Claimant had until the close of business on April 12, 1976 to **take** appropriate action; and because he did so, he did not forfeit his seniority.

Of course, the disposition of this dispute is limited solely to the facts of record before the Board, but under those facts, we are obliged to sustain the claim.

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

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: 
Executive Secretary

Dated at Chicago, Illinois, this 13th day of October 1978.