

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22930
Docket **Number** CL-22979

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight **Handlers**,
(Express and Station **Employees**
(
(The Chesapeake **and** Ohio Railway Company
((Chesapeake District)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (668801)
that:

Claim No. 1:

- (a) The Carrier violated the Clerical Agreement when they held that Mr. George B. Miller had forfeited **seniority**.
- (b) The whole matter should be rescinded and Mr. Miller's record be **made** clear.

Claim No. 2:

- (a) **The** Carrier violated the Agreement when it failed to provide Mr. G. B. Miller, a fair and impartial **hearing** on March 6, 1978.
- (b) That Mr. Miller be compensated eight (8) hours at **the** pro rata rate of **that** position he would have **been** entitled starting February 20, 1978 and continuing until he is reinstated.

OPINION OF BOARD: On January 31, 1978, the **claimant was** regularly **assigned** to position of clerk, C-92, hours 8:00 A.M. to 5:00 P.M., work **week** Monday through Friday, **at Williamsburg, Virginia**. **He** had a seniority date of June 23, 1969. About 10:15 A.M., January 31, 1978, claimant was advised by a senior **employee**, G. C. **Harman**:

"Due to being displaced by senior employee, I **will** exercise **my** seniority on Position C-92, Williamsburg, effective 8:00 A.M., February 1, 1978."

By letter dated February 15, 1978, claimant advised the proper Carrier officer:

"**Having** been displaced on Position No. C-92, Williamsburg, Virginia, effective February 1, 1978, by Senior employee, G. C. **Harman**, and **my** seniority does not entitle **me** to any permanent position, I hereby declare **Richmond**, Va. my home terminal, and will protect the Extra List under rule **18b**."

The question for decision by the Board is posed by the **Organiza-**
tion as:

"**Did** Claimant Miller exercise his seniority rights within the time limits (ten working days) prescribed by **Rule 18?**"

The Organization contends that Wednesday, February 1, 1978, is not to be counted as one of the ten working days, but Wednesday, February 15, is to be counted, and when claimant filed his letter on February 15, 1978, such letter was timely filed in accordance with the Agreement.

The Carrier's position is that Wednesday, February 1, 1978, is to be counted as one of the ten working days, and, therefore, February 14, 1978, was the tenth working day.

This Board has no quarrel with the reasoning set **forth in** Third Division **Award** 10420, quoting Second Division Award 3545, **which** cited the **rule** of law to the effect that in computing a specified period of time, the first day is excluded and the last day is included. **However**, the record in this dispute is clear that the parties hereto have an agreed **upon** interpretation of **Rule** 18 that the date actually displaced **must** count as the first day of the ten working days **and, therefore**, the general rule as outlined in Award 10420 **and Second** Division Award 3545 is not applicable on this property.

Under the agreed upon interpretation **on** this Carrier, **claimant** was required to either file his name **and** address in **writing** with the proper officer, or file a letter with the proper officer stating that he desired temporary work on or before February 14, 1978, which he did **not** do, and under the provisions of **Rule** 18(e) he forfeited all **seniority** rights. The claim will, therefore, be denied.

Incidentally, the record **shows** that claimant visited the Carrier's office on February 8, 1978, well within the ten working day period, to discuss his vacation, at which time he was reminded that he must sign up as a cut-off **employee**, but he did not submit the letter until **4:50 P.M.**, February 15, 1978, one day late **under** the agreed upon interpretation of **Rule 18**. Furthermore, the record shows that Carrier did everything within reason to notify claimant of the hearing held **on March 6**, 1978, which **claimant** did not attend.

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD **ADJUSTMENT** BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 30th day of July 1980.