

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23136
Docket Number MW-23260

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(St. Louis-San Francisco Railway Company)

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

(1) The Agreement was violated when the Carrier failed to schedule and hold an investigation which was timely and properly requested in conformance with Article 11, Rule 91(b) (1) (System File B-1870).

(2) As a consequence of the above, Trackman J. B. Harper, Jr. shall be reinstated with Seniority and all other rights unimpaired, his service record shall be restored and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant was formerly employed by the Carrier as a trackman, having entered the service on April 4, 1977. The Carrier contends that claimant was furloughed in force reduction on November 19, 1978, and failed to comply with Rule 78, which reads:

"When employees laid off by reason of force reduction desire to retain their seniority rights, they must file their name and address in writing with their immediate supervisor within 7 calendar days of date laid off. They must file their name and address in writing with their immediate supervisor for any subsequent change in their mailing address. An employee failing to return to service within 10 calendar days after being notified to do so (by mail or telegram to last known address) will forfeit all seniority rights. (This rule will not protect seniority rights of employees affected by It beyond two years.)"

The **Carrier** contend.8 that after the expiration of seven calendar days of date laid off, **claimant's** personal **record** was closed in **accordance** with Rule **78**.

Rule **78** is self-executing **and** there is no proof **in** the record that claimant did file his **name and address** within the time specified in the rule.

When claimant was notified by the **Carrier** that he **had not filed** his name and **address**, it was then up to the **claimant** to **come** forward with **information** as to when he filed his name and address and who he filed **it** with.

It is our considered opinion from the record before us, that claimant has not **proved** that he complied with the provisions of Rule **78** within the time specified therein.

As we have decided the dispute on its merits, it is not necessary **to** pass upon the procedural issue raised.

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

!&at the parties waived oral hearing;

That the **Carrier** and the **Employee** involved in this dispute are respectively **Carrier** and **Employee** 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:

A. W. Pauls
Executive Secretary

Dated at **Chicago**, Illinois, this 30th day of January 1981.