

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24337
Docket Number MW-23752

Robert E. Peterson, Referee

PARTIES TO DISPUTE: { **Brotherhood of Maintenance of Way Employees**
Chicago, Milwaukee, St. Paul & Pacific Railroad Company

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

(1) The **Carrier** violated the Agreement when it ~~im~~properly closed the **service** record of T. E. Myers (System File C#53/D-2293-1).

(2) T. E. Myers be returned to service with seniority **and all other rights unimpaired and** he shall be compensated for all wage loss suffered."

OPINION OF BOARD: The basic issue in dispute in this case concerns a question as to whether or not **Claimant's** purported inability to report for work upon recall from furlough because he **maintains** he was without reliable **transportation** represents "unavoidable cause" as that term is set forth in **Rule 11** of the Agreement.

Rule 11 states:

"When forces are increased, except as provided in **Rule 8(c)**, the senior, available, **laid off employees** in the respective **classifications** will be notified **and** they will return to **service** within seven (7) days after **being** notified at their last known address, unless prevented **from** doing so by reason of **sickness** or other **unavoidable** cause. **Failure** to return to service in accordance with the provisions of this rule will cause forfeiture of seniority rights."

Claimant contends that when he received his recall notice he **was** not able to report to Avery, Idaho, 300 miles from where he resided in Three Forks, Montana, because he **did not have** money or transportation in which to get there or on which to **live** after he got there. **Also to be noted**, however, in a letter he wrote **Carrier** is the fact that in addition to attributing his inability to report due to "**reoccurring car** troubles" and a personal belief that lodging which the **Carrier** said would be available would not be at all suitable, Claimant also stated:

"As I am trying to find another job I feel I should be here in case one of my prospects comes through. **However I** am still available for my last headquarters Job."

We are not convinced the circumstances Claimant relates as prohibiting him from accepting timely recall to service represent "unavoidable cause" within the meaning and intent of Rule 11. It was incumbent upon Claimant to get to work whether that meant higher degrees of automobile preparedness, or by means of alternate transportation. This, and the other reasons he advanced for not reporting do not represent mitigating circumstances in relation to his obligation to be available for recall or forfeit his seniority. It was therefore proper for Carrier to have removed Claimant's name from the seniority roster and to have closed its service record on him.

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: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 27th day of April 1983.

