

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24594  
Docket Number NW-24799

**Tedford E. Schoonover**, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(Consolidated Rail Corporation  
(former Lehigh Valley Railroad Company)

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

(1) The Carrier violated **the** Agreement when it dismissed Mr. Ricardo Avery without the benefit of a fair hearing and investigation as stipulated in Agreement Rule 5-a (System File SD LV-185).

(2) The claim as presented by Local Chairman Joel Myron on July 12, 1979 to Division Engineer J. V. **Acree** shall be allowed as presented because said claim was not disallowed by Division Engineer J. V. **Acree** in accordance with Article V, Section 1(a) of the August 21, 1954 National Agreement.

(3) As a consequence of either or both (1) and/or (2) above, the Carrier shall

"return him (**the** claimant) to duty and pay him all back time from January 5, 1979 to the present, including overtime lost."

OPINION OF BOARD: Although this case involves circumstances of an alleged theft of checks and incarceration in January 1979, the essential facts on which the claim must be determined are the prevailing rules of the Labor Agreement as **well** as the National Agreement of August 21, 1954.

In the first place, Rule 2-h provides for forfeiture of **seniority** by **employees** who fail to return to service within seven days after being notified or advise the proper Carrier Officer of any change of address. **Moreover**, Claim is dated July 12, 1979, a date well past the 60 days filing limit required in **Article V**, Section 1(a) of the National Agreement of August 21, 1954. Thus, we are bound to conclude that claimant's seniority was forfeited under Rule 2-h by his own failure to respond to recall or keep the carrier advised of any **change** in address. In these circumstances **the** claimed violation of Rule 5-a is without validity.

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: Nancy J. Sever  
Nancy J. Sever - Executive Secretary

Dated at Chicago, Illinois, this 15th day of December 1983.

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