NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 24595

THIRD DIVISION Docket Number 1X5-24825

Tedford E. Schoonover, Referee

PARTIES TO DISPUTE (Donald W. Vachon
(Consolidated Rail Corporation

STATEMENT OF CLAIM: "This is to serve notice, as required by the rules of the National Railroad Adjustment Board, of my client's intention to file an ex parte submission on August 19, 1982 covering an unadjusted dispute between he and the Pennsylvania Railroad and its successor in interest The Consolidated Rail Corporation involving the question:

Donald W. Vachon was employed by Pennsylvania Railroad Company from August 4, 1950 to December 24, 1960 as a baggage handler, at which time he was furloughed. Ye was informed that he would be reinstated when work became available. He has not been reinstated although employees with less seniority than he have returned to work. As a result of the failure of the Union to preserve his seniority and the failure of the Railroad to rehire him, Donald Vachon now requests reinstatement and damages against The Consolidated Rail Corporation and the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees, before this Board."

OPINION OF BOARD: The claimant was employed by the former Pennsylvania Railroad on August 4, 1950 as a baggage handler until December 24, 1960 when he was furloughed account his position was abolished. Following the furlough claimant was advised as follows by H. W. Manning, Superintendent of Personnel by letter dated September 30, 1963:

> "In accordance with Paragraph 3-C-l (h) of the Agreement, Attachment 'A-l', Brotherhood of Railway Clerks, etc., effective November 1, 1355, it is requested that you advise in writing, IN DUPLICATE, whether or not you desire to return to service when the opportunity presents.
>
> Your reply MUST BE IN DUPLICATE: addressed to Superintendent-Personnel, Room 212, Pennsylvania Station, Harrisburg, Pa.
>
> Failure to reply by December 31st of this year will cause forfeiture of your seniority."

Claimant contends he answered the above letter on December 21, 1963. A copy of his alleged reply was submitted with his claim. It is noted his letter was simply addressed "Dear Sir" instead of to the Superintendent of Personnel as required by the specific terms of the rule. Carrier avers it never received his letter. Failing to receive a letter from claimant as required the Carrier should have taken prompt action to remove his name from the seniority roster. Carrier admits, however, due to clerical error, such was not done until 1973 when general action was taken to remove names of former employes whose seniority had been terminated. Carrier's error does not serve to validate Mr. Vachon's claim.

The claim is also defective in a number of other respects. For example, counsel's submission asserts a copy of Paragraph 3-C-1(h) was intended to be attacked to Mr. Manning's letter quoted above. Careful reading of the letter refutes this contention. It did not state a copy of the rule was attached. It only referred to the rule. Counsel also contends claimant never received a copy of the labor agreement. This is not an acceptable defense. Employes working under the terms of collectively bargained agreements have a personal responsibility to be aware of the provisions thereof particularly those provisions related to their individual status. Moreover, it was the policy of the Carrier to provide each employe with a copy of the agreement.

Although claimant states he visited the carrier property and talked with employes from time to time he did not take any action to contact authoritative officers of the Carrier until 1980, some 20 years after his furlough. During that period the former Pennsylvania Railroad, his original employer, was merged into the former New York Central in February 1368. The merged property, known as the Penn Central, became the Consolidated Rail Corporation on April 1, 1976. Finally, the remaining baggage handlers at Harrisburg, the location of claimant's job in 1360 were transferred to the National Railroad Passenger Corporation (Amtrak) effective November 1, 1373. With all of these changes it is difficult to believe claimant had a real interest in checking on his prospects as a furloughed employe when, during all those intervening years, he did nothing toward contacting any authoritative representative of the carriers to determine his status.

It must also be pointed out that Rule 16 of the controlling labor agreement sets up conditions for employes who question their seniority which has a period of 60 days to protest the accuracy of the seniority roster. Here, we come back to the fact that claimant was indifferent and made no protest until 1980. Thus he let 7 years go by without action since 1373 when his name was removed from the roster.

The Railway Labor Act established this Board and one of the basic purposes of the statute is the prompt and orderly settlement of disputes growing out of grievances such as the one presented in this case. The grievance presented here was actually first presented by letter dated May 8, 1381, some seventeen years after the furlough and 8 years after claimant's name was removed from the seniority roster. Such procrastination not only violates the basic purpose of the statute, it also involves general principles of law. Thus, as stated by Referee Carter in Third Division Award 7135 "One may not sleep on his rights indefinitely and then avoid the effects of acquiescence, estoppel and laches."

Another award which also has particular applicability here is Second Division Award 9053 by Referee LaRocco:

> "It would be patently unfair to subject the Carrier to potential liability on a claim which is brought five years too late. Allowing claimant to resurrect a stale claim would undermine the equally important policy of promoting stability and predictability in the labor-management relationship."

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 Employes involved in this dispute are respectively Carrier and Employes 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. Dever - Executive Secretary

Dated at Chicago, Illinois, this 15th day of December 1383.