

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24680
Docket Number MW-24511

Robert W. McAllister, Referee

(Brotherhood of Maintenance of Way hployes
PARTIES TO DISPUTE: (
(Chicago, Milwaukee, **St. Paul** and Pacific Railroad Company

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

(1) The cancellation of the seniority rights of Section Laborer **Jewell** C. Weaver on April 15, 1980 was improper and in violation of the Agreement (System File **C#42/D-2431-1**).

(2) The claimant shall **be** reinstated with seniority and **all** other rights restored and unimpaired and he shall **be** compensated for all wage loss suffered.

OPINION OF BOARD: The Claimant's position as a section **laborer** on Extra **Gang** 5535 was abolished on February 15, 1980. He exercised his seniority to a laborer's position on Crane Section 4609 and, thereafter, took a one week vacation from February 25 through February 29, 1980. Claimant was unable to **exercise** his seniority to another section laborer's position, but did perform temporary service on March 2, 3, April 2, 3, 9, 10, and 11, 1980.

On April 14, 1980, the Claimant filed his name and address with the Division Manager's office. Under date of April 15, 1980, Division, Manager **J. W. Stuckey** advised the Claimant he had forfeited his seniority under the provisions of Rule 10.

A hearing was requested by the Claimant which was granted and held on **May 15**, 1980. Subsequently, the Carrier reaffirmed its position that the Claimant had forfeited his seniority.

The Carrier argues that the Claimant had thirty-five (**35**) days from February 29, 1980, in which to file his name and address to protect his seniority and since he did not do so until April 14, 1980, or forty-five (**45**) days hence, he forfeited his seniority under Rule 10.

The **Organization** contends that the Claimant had exercised his seniority subsequent to February 29, 1980, i.e., March 2, 3, April 2, 3, 9, 10 and 11, 1980, **and**, therefore, by filing his name and address on April 14, 1980, was well within the thirty-five (**35**) days stipulated in Rule 10. They **submit** that this exercise of seniority is contemplated in Rule 9 (**c**) in that the Claimant did perform actual service on the referred to dates.

The Board does not dispute the Carrier's position with respect to its interpretation of Rule 10 in this instance. The Claimant was clearly outside the stipulated time requirements when he filed his name **and** address on April 14, 1980. However, this Board is also cognizant of the fact that the Carrier allowed the Claimant to perform temporary service well beyond the expiration of the thirty-five (35) day time limit. Thus, the Board is inclined, based solely on the **circumstances** peculiar to this dispute, to restore the Claimant's seniority without compensation for time lost.

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 violated.

A W A R D

Claim sustained in accordance with the **Opinion**.

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

Attest:


Nancy J. Bever, Executive Secretary

Dated at Chicago, Illinois this 24th day of February, 1984

