

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24820
Docket Number MS-24395

Edward M. Hogan, Referee

(George D. Rock

PARTIES TO DISPUTE: (

(Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

Was the failure to recall me to work a violation of my contract rights?

OPINION OF BOARD: The Claimant was hired August 12, 1980, as a trackman. On December 15, 1980, Claimant was displaced from his position with the 4R Quality Control Gang. The Carrier permitted the Claimant to continue to work with the 4R Gang as an unassigned extra laborer from December 16 through December 19. From December 20, 1980 to January 5, 1981, the Claimant was out of town. When he returned after the holidays, he filed his rights retainer under the provisions of Rule 10.

The Carrier notified the Claimant in a letter dated January 20, 1981, that his rights retainer could not be accepted as it was filed more than 15 days after the last day he worked. The Organization instituted a claim on behalf of the Claimant. Subsequently, the Organization appealed to the Carrier's highest designated officers who denied the claim and it is presently before this Board for review.

The Claimant contends that he was on an authorized leave of absence extending to January 5, 1981. At that time, the Claimant allegedly filed his rights retainer within the time limits of Rule 10. Claimant alleges his position was abolished on December 23, 1980, thus, the filing of his rights retainer on January 5, 1983, would have fallen within the 15 calendar day limit.

The Carrier argues that the Claimant was not on vacation because he had not qualified for vacation nor had he been on an authorized leave of absence after December 15, when he was displaced from the 4R Quality Control Gang. Carrier points to its denial letter of August 8, 1981, wherein the Claimant's contention regarding authorized leave of absence was reputed: "There is no record nor recollection by claimant's supervisors of a request for leave of absence for any reason whatsoever." Carrier acknowledges Claimant worked as an unassigned extra laborer from December 16 through December 19, but contends that this did not extend the time limits of Rule 10 or Rule 13. Carrier alleges the 15 day time limit of Rule 10 begins with the Claimant's displacement on December 15 by a senior employee not on his last day worked. Finally, the Carrier argues there could be no extensions of the time limits for filing rights retainer as the Claimant had not properly requested a leave of absence under Rule 54.

This Board finds the Carrier's position persuasive in the case at bar. Claimant was not absent on vacation or leave of absence when he was displaced from his job.

The Claimant acknowledged in his submission to this Board that he was not eligible for vacation time. Further, this record is devoid of evidence to support Claimant's alleged leave of absence. In Second Division Award No. 4464 (McDonald), this Board held:

"The Board cannot be expected to enter into the realm of speculation and conjecture to determine the factual background of the dispute."

We are inclined to follow prior precedent and shall conclude that the Claimant did not meet his evidentiary burden of proof. He failed to introduce evidence of a probative to substantiate a legitimate leave of absence. The Board cannot find justification for extending the time limits of Rule 10 (Retention of Seniority) and therefore must conclude that Claimant did not file his rights retainer in a timely manner.

The Carrier was under no obligation to recall the Claimant to work as his name was properly dropped from the seniority roster. The Board is compelled to deny this claim.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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. Dever - Executive Secretary

Dated at Chicago, Illinois, this 16th day of May, 1984