

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25227
Docket Number MS-25442

James **Robert Cox**, Referee

(**R. Wayne Rester**

PARTIES TO DISPUTE: (

(Union Pacific Railroad

STATEMENT OF CLAIM:

Petitioner claims that, by design, employees of the Union Pacific Railroad Company sought to have the petitioner terminated from his job and abolished **from** the seniority **roster (sic)** despite his **many** years of service for the Union Pacific Railroad Company. Petitioner requests that he be reassigned to his proper position on the seniority **Roster (sic)** and that he receive all back **pay** and other benefits due to him due to the unlawful actions of the Company and it's employees.

OPINION OF BOARD: In October 1981 Claimant Wayne Rester, received Notice that he was to be furloughed from his job as a Painter with the Carrier. The layoff Notice to the yang in which Hester worked clearly specified that loss of seniority would be a consequence of failure to comply with Rule 21 (**f**). Rule 21 (**f**) of the Schedule Agreement provides that furloughed employees retain their senior provided they file their addresses in writing within ten calendar days after **being** displaced and that Failure to follow the Rule will result in **forefeiture** of all seniority.

Claimant concedes that he did not write a recall letter, expecting that the B & B Clerk **would** prepare the letter for him to sign. Furthermore. **there** is no evidence that Hester made any effort to **sign** or submit a recall letter subsequent to his layoff.

Claimant's name and seniority date were deleted from the seniority roster January 1, 1982. It was not until **May** 1982, that Hester contacted the Organization regarding the loss of seniority.

The Carrier acted properly within the proscription of the Rule in terminating the Claimant's seniority.

Claimant contends that his failure to file resulted from a conspiracy participated in by the B&B Clerk who prevented Hester from filing the recall letter by sending him out on a painting job while the other employees were completing their letters. A fellow employee, signing his recall notice, asked the Clerk. where **Hester** was. The Clerk responded, 'don't worry about Wayne, we'll take care of him.'

In September, 1981, the same B&B Clerk told another employee that **he** had been trying to yet rid of **Hester** for years and was **going** to do it before he retired, complaining **about** Rester's failure to perform certain work including climbing towers.

Upon this evidence, the Board fails to find a conspiracy or effort to prevent Hester from filing the recall letter. The evidence only indicates management dissatisfaction with Claimant's work performance. The term "take care **of**" did not necessarily have a negative connotation in the circumstance in which it was uttered.

The recall letters of **Hester's** yang were handwritten, not made out by the B&B Clerk. Evidence indicates that Claimant had signed his **own** recall notices in October, 1977, and October, 1979.

Claimant violated Rule 21 (**f**). Consequently, his claim is denied.

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

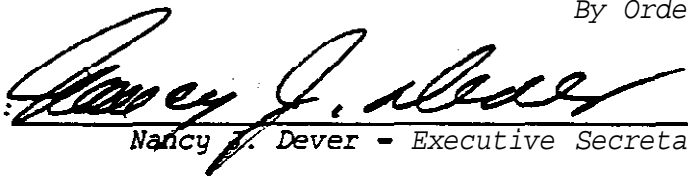
That the Agreement was not violated.

A W A R D

Claim **denied**.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 31st day of January 1985.