NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 25520

THIRD DIVISION Docket Number MW-25638

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(The Chesapeake and Ohio Railway Company

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

(1) The Carrier violated the Agreement when it improperly closed the service record of Mr. T. L. Pollock (System File C-TC-1511/MG-37531.

(2) The claimant shall be returned to service with seniority and all other rights unimpaired.

OPINION OF BOARD: Claimant's regular position as Assistant Foreman was abolished on August 13, 1982. Rule 2(h) of the applicable Agreement provides:

> "Displacement rights -- Employees Other than Laborers.-- When force reductions are made or displacements occur, employees other than laborers shall have right to displace any junior employee in the same or lower classes and on the same or lower rosters in the same group on which seniority has been established. In other words, displacement will be downward through the classes and rosters of a group on which seniority was established as the employee went up. Where men from Bridge and Structures or Track Groups establish seniority in roadway machine operator, camp car cook, or pumper groups, they shall, when they do not stand to work in such groups, return to the Bridge and Structures or Track Groups and exercise seniority according to the group in which they had previously established seniority. Displacement hereunder must be made as long or as far down the rosters as the employee stands to work, within ten days from the date of abolishment of positions or displacements, unless prevented by sickness or injury, in order to retain seniority. Employees whose seniority does not entitle them to work in any class, become cut-off employees and must protect their seniority in accordance with Rule 5:

The Carrier contends that Claimant did not comply with Rule 2(h) as he contacted the Supervisor's office in the afternoon of August 23, "at which time it was too late for him to comply with the self-executing provisions of Rule 2(h). Therefore, Mr. Pollock forfeited his seniority because of his failure to adhere to the time limits set forth in Rule 2(h)."

The Organization contends that on Friday, August 20, 1982, the Claimant telephoned the Track Supervisor with respect to exercising his seniority and returning to service; that the Supervisor told Claimant to report to his office on Monday, August 23, 1982, and a decision would be made at that time with respect to where Claimant could exercise his displacement rights; that due to Claimant's uncertainty as to whether he could exercise his seniority to displace a junior employe, on August 20, 1982, he filed his name and address under Rule 5 of the Agreement.

There is no question but that Claimant contacted the Supervisor's office on August 23, 1982. There is nothing in the record by the Carrier indicating what the Supervisor told the Claimant in the August 23, 1982, meeting. The Organization contends:

> "The claimant reported to Track Supervisor Thompson's office on the morning of August 23, 1982 and was advised by Mr. Thompson that he (the claimant) would have to call back later in the day to find out where he could exercise his displacement rights. The claimant telephoned Mr. Thompson later in the day as instructed and was advised that he could not displace any other employe. Inasmuch as he had already filed his name and address with Manager-Engineering Silbaugh in accordance with Rule 5(a), the claimant assumed his seniority was protected and he would be recalled to service when forces were increased."

The Claimant was advised by certified Nail by Carrier's Manager-Engineering on October 5, 1982:

> 'This is to advise that you have forfeited your seniority in the Maintenance of Way Department of the C&O Railway by failing to exercise your seniority within ten days of being displaced, in accordance with Rule 2(h) of the Agreement."

We agree with the Organization that August 23, 1982, was within ten days from August 13, 1982, under Rule 2(h) of the Agreement. See Second Division Award No. 3545, Third Division Awards Nos. 3513, 19177 and 24940.

Based upon the entire record, we find that Carrier was in error in removing Claimant's name from the Seniority Roster on October 5, 1982. The only claim handled on the property was that Claimant's name be restored to the Seniority Roster. We will sustain the claim to that extent only.

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 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. Dever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of June 1985.