

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25891
Docket Number MW-25692

David P. Twomey, Referee

PARTIES TO DISPUTE:

(Brotherhood of Maintenance of Way Employees
(
(National Railroad Passenger Corporation

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 Truck Driver J. Hunt (System File NEC-BMWE-SD-498).

(2) Truck Driver J. Hunt shall be returned to service with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered."

OPINION OF BOARD:

The Claimant entered the Carrier's service on October 25, 1976 as a Trackman on the Philadelphia Division. On July 15, 1982, Claimant began serving a 15 day disciplinary suspension. Claimant was due to return to his position on July 30, 1982. Claimant's awarded position of Truck Driver in Gang G-122 was abolished along with all of the other positions of Gang G-122 on July 19, 1982, during his suspension period. In accordance with the application of Rules 22 and 18, Claimant was required to exercise his seniority or file furlough papers within 10 days of his return to duty set for July 30, 1982.

From Monday, July 27, through Friday, August 6, 1982, Claimant was incarcerated by order of the Common Pleas Court in connection with a Domestic Relations Branch matter. August 7 and 8, 1982 were Saturday and Sunday, respectively. On Monday morning, August 9, 1982, Claimant reported to his supervisor. The Organization and Claimant contend that the supervisor would not allow Claimant to return to work. The Carrier contends that Claimant indicated a preference to work on August 9, 1982, but since he reported after the start of the daylight shift, he was counseled that he would either have to find a job which had not yet started, and which he could hold based on his seniority, or he would have to file furlough papers by the end of the day. Claimant was notified that he was terminated from service for failure to comply with the Agreement. Claimant filed immediate handwritten protests to his supervisor's actions.

The Organization is incorrect in its position that the time limits of Rule 74, DISCIPLINE, were applicable to this case. Rule 74 is not controlling in this dispute. The matter before this Board is not discipline. In accordance with Rule 22, Claimant's status was governed by Rule 18, his regular position having been abolished while off duty because of a suspension. Rule 18 is a self-invoking rule and is not discipline. Claimant's incarceration was not a valid reason for failure to fulfill the requirements of Article 18 during the period between July 30, 1982 and August 6, 1982. The Carrier's position that Claimant took no action to protect his seniority on August 7 and 8, 1982, after being released from incarceration is unpersuasive since these dates were Saturday and Sunday and nothing in the record would indicate that it was possible for Claimant to exercise his seniority on those days.

We have considered all factors of record concerning August 9, 1982. We conclude, strictly limited to the narrow facts of record now before this Board, that Claimant shall be restored to service with his former seniority. Claimant's name shall be restored to its proper position on the seniority roster, with his seniority and all rights unimpaired. The portion of the claim for compensation for all wage loss suffered is denied.

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 violated.

AWARD

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 30th day of January 1986.