

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25994
Docket Number MW-25984

John W. Gaines, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(The Chesapeake and Ohio Railway Company (Northern Region)

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

(1) The Carrier violated the Agreement when it failed to recall furloughed Trackman D. C. Nakoneczny to service on and subsequent to April 4, 1983 (System File C-TC-1649/MG-4118.)

(2) The claim as presented by Senior Assistant General Chairman J. R. Cook on May 13, 1983 to Manager-Engineering J. R. Rymer shall be allowed as presented because said claim was not disallowed by Manager-Engineering J. R. Rymer in accordance with Rule 24(h)(1)A.

(3) As a consequence of either or both (1) and/or (2) above, Trackman D. C. Nakoneczny shall be compensated

'for all hours worked by any junior employe to Mr. Nakoneczny that was recalled to any location protected by Mr. Nakoneczny's recall request, continuing until such time as Mr. Nakoneczny returns to work.'

OPINION OF CLAIM: Carrier submits that Claimant did not comply with Carrier's recall-notice letter of March 25, 1983, that was mailed to him at the address shown on his 1982 recall request. By his absence on the recall date of April 4, 1983, as specified in the letter, Claimant is alleged to have forfeited seniority; Carrier terminated his status and closed his service record; Claimant's absence was considered as voluntary severance from service.

The Agreement covers the mailing of recall letters, providing:

"Rule 5(c)(1). . . . Employees recalled hereunder must report ten (10) calendar days after being notified by mail or telegram at the last known address or forfeit seniority. Postmark date of letter or date of telegram will constitute date of notice."

Carrier contends that it complied with the provisions of the above Rule. Claimant contends that it did not receive the March 25 recall letter.

The Organization by letter dated May 13, 1983, notified Carrier to immediately recall Claimant, and to consider the grievance to include a time claim for hours of work lost. Carrier's response, dated October 4, 1983, declining to restore Claimant to service, was untimely under Rule 24(h)(1)(A).

Carrier's time limit violation was tolled by its declination letter of October 4, 1983, but because of the procedural violation by Carrier, we will award Claimant compensation, computed on the hourly basis set out in the Statement of Claim, from and including April 4, 1983, through October 3, 1983.

Based solely on the record before us, we will award that Claimant be restored to service, with seniority and all other rights unimpaired, but without compensation for the period from October 4, 1983, forward.

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 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 Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Devos - Executive Secretary

Dated at Chicago, Illinois this 26th day of March 1986.

