

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26001
Docket Number MW-25968

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 L. Follmer to service on and subsequent to April 4, 1983 (System File C-TC-1655/MG-4102).

2. Trackman L. Follmer shall be allowed pay at the trackman's rate for each and every hour he was entitled to work beginning April 4, 1983 and continuing until he is recalled to service."

OPINION OF BOARD: The Claim in this dispute must turn on resolution of the question of whether Claimant filed proper notice with the Carrier to protect his seniority at the time of his furlough.

Rule 13 entitled "NOTICE OF DESIRE TO RETAIN SENIORITY", Paragraph A, requires laid off Trackmen to "... file their name and address through the foreman in writing with the Manager of Engineering" within fifteen (15) calendar days if they desire to retain seniority.

Rule 5 requires that Trackmen "... must file notice as provided in Rule 13(a) or forfeit seniority."

No evidence appears in the record before us to support compliance with the requirement of the Rules to file a Recall Request within fifteen (15) days of furlough. Any presumption we would make that it was filed using as our basis the bare allegation offered, is rebuttable and fails because Carrier denies receipt of same.

While the Organization earnestly suggests that Carrier must counter with some proof that it did not receive notice from the Claimant, we must point out that Carrier has no way to prove the negative that no notice came to its attention. The Organization must take the affirmative in this instance and prove its assertions.

We find the Claim is not supported by the record, and therefore is without merit. Carrier could validly close Claimant's service record and remove him from the Seniority Roster as this is what is required under the mandate of Rule 13(a).

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. Lever - Executive Secretary

Dated at Chicago, Illinois this 25th day of April 1986.

