

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26013
Docket Number MS-26363

John W. Gaines, Referee

PARTIES TO DISPUTE: (Donald A. Albert
(
(Atchison, Topeka and Santa Fe Railroad Company

STATEMENT OF CLAIM: "Claim of Donald A. Albert
A.T.S.F. Claim No. 31-2000-100-10

1. Carrier wrongfully terminated employe, Donald A. Albert for failure to file address correction in the month of December 1983.

2. Carrier should reinstate employe Donald A. Albert to his seniority rights, backpay and attorney fees."

OPINION OF BOARD: The main issue as to the basic validity of the present Claim turns on the question of whether Claimant properly filed notice of his current address with Carrier to protect against forfeiture of his seniority rights. His employment and seniority rights were terminated effective January 1, 1984.

At outset we take note, in passing, that several procedural flaws developed in the course of things, one being that Claimant through his Attorney failed to take any steps for the handling of the matter on the property following disallowance of his grievance. Carrier's letter of disallowance was dated November 30, 1984, but Claimant thereafter did not properly progress the dispute in that he never discussed it or asked for the required discussion of it in conference on the property. The conference is a necessity as set out in Section 3, First (i) of the Railway Labor Act.

In addressing the main issue, we find no evidence of probative value to support Claimant's compliance with Notification Rule 17 as it applies to his status in being off-work due to reduction in force.

Section 17-B of the Rule provides in pertinent part:

". . . Employes off-in-force-reduction, who do not perform service under this Agreement during a calendar year, must file their current address with their employing officer during the month of December of such calendar year and failure to file in December shall result in forfeiture of all seniority rights."

Carrier, in the noted November 30, 1984, letter as signed by Claimant's Employing Officer Martin, advises Claimant there is no record of receiving his current address from him during the month in question, December, 1983. So, the letter further advises, Claimant's status of having forfeited seniority rights has not changed.

Claimant alleges he furnished, as of December 4, 1983, a change of address notice that he mailed on that date, not to his Employing Officer but to Carrier's Topeka, Kansas, offices. He offers as evidence a copy of the purported notice.

Mailing the notice other than to Claimant's Employing Officer is defective, failing to comply with the mandatory requirement explicit in Section 17-B. The record shows that, in an earlier connection, Claimant was aware of proper mailing procedure. By his letter of January 17, 1983, with copy to his Employing Officers at Fresno, California, Claimant in accordance with Transfer Rule 13, notified them of a transfer request for his seniority. Rule 13 provides for essentially the same mailing requirement by the language "with copy to employing officer" as does Rule 17.

Rule 17 must be complied with or forfeiture becomes automatic in this situation. The Board holds that the present Claim is therefore 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. Bever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of May 1986.

