

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26078
Docket Number MW-26213

John W. Gaines, Referee

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

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

(1) The Carrier violated the Agreement when it removed the name of Mr. Marcus J. Bishop from all seniority rosters within a letter dated December 9, 1983 (System File C-M-2050/MG-4370).

(2) The December 9, 1983 letter addressed to Mr. Bishop shall be rescinded, Mr. Bishop shall have his seniority restored with the seniority dates he held prior to the violation referred to in Part (1) hereof and he shall be compensated for all wage loss suffered as a consequence of said violation."

OPINION OF BOARD: The question here raised is whether Claimant filed timely notice with the Carrier to protect his seniority at the time of his furlough.

Rule 5(a) requires that employees protecting their seniority must file notice with their name and address "in writing not later than ten days from date they are cut off."

Carrier offers undisputed evidence that notice from Claimant to protect his seniority was received from him on the thirteenth day following cut off, and submits that this late-filing with Carrier therefore occurred thirteen days from his date of cut off.

The Organization points out the fact that there were two holidays which fell within the thirteen day period, and submits that it is the mailing date which is material, not the receipt date, in determining when actual filing takes place. Claimant admits he did not mail until twelve days from cut off.

There is no provision of the Agreement allowing intervening holidays to delay the start of, or stay the running time of, the Rule's ten day requirement on filing. Carrier correctly concludes that date of receipt is the controlling date to use in establishing whether that ten day requirement is met or not.

We find the Claim is not supported by the evidence and is therefore without merit. It was proper for Carrier to remove the Claimant from the Seniority Roster under authority of Rule 5(a), and for Carrier to refuse to recall him to service as it did.

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. Dever - Executive Secretary

Dated at Chicago, Illinois, this 31st day of July 1986.