

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26173
Docket Number MW-26215

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 names of Messrs. W. Blackburn, B. Grimm, D. E. Cookenour, H. L. Johnson and B. Whanger from all seniority rosters within letters dated December 9, 1983 or January 4, 1984 (System Files C-M-2078/MG-4399, C-M-2087/MG-4403, C-M-2083/MG-4396, C-M-2054/MG-4367 and C-M-2085/MG-4398).

(2) The letters dated December 9, 1983 or January 4, 1984, addressed to the respective claimants, shall be rescinded, Messrs. W. Blackburn, B. Grimm, D. E. Cookenour, H. L. Johnson and B. Whanger shall have their seniority restored with the seniority dates they held prior to the violation referred to in Part (1) hereof and they shall be compensated for all wage loss suffered as a consequence of said violation."

OPINION OF BOARD: These five Claimants were determined by Carrier to have forfeited their seniority in the aftermath of a general force reduction. On the property, in progressing Claims they filed, they consolidated all five as one pleading.

The principle behind Rule 5(a) is to protect employees' seniority, following cut off, by the required expedient of a written notification submitted to Carrier. Specifically, the Rule requires that notice, in duplicate to the Manager-Engineering, of the name and address of the employees must be filed "in writing not later than ten days from date they are cut off."

By extension of this principle, as a specific outgrowth of Rule 2(h), the Parties have the additional understanding that the employee who is allowed vacation while on furlough is entitled to the option, as one Claimant is entitled here, to file his notice following vacation, but not later than ten days from date of the last allowed vacation pay.

Claimants through the Organization earnestly propose to have the Board interpret mailing date to constitute the date of filing. They then proceed with the evidence to show that Claimants submitted notices mailed not later than ten days of the date they were cut off or were last allowed vacation pay.

This Board is unable to accept the proposition that mailing amounts to filing under Rule 5(a). The date when each notice was filed with the Manager-Engineering was its date of receipt. And there is no dispute from this record that the filed notices were all received later than the ten days from the date of cut off.

Claimants have not borne their burden to show that their Claim should be sustained because of a proven breach of an existing rule or authorization. Therefore, the Claim must necessarily fail.

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 29th day of October 1986.

