NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 26241

THIRD DIVISION Docket Number MS-26925

Edwin H. Be"", Referee

PARTIES TO DISPUTE: (Alfred Segura, Jr.
(Southern Pacific Transportation Company

STATEMENT OF CLAIM:

"Claim on behalf of A. Segura to replace his name on Seniority Roster."

OPINION OF BOARD: Claimant, a Track Laborer, "as furloughed on September 2, 1982. Article 3, Section (g) of the applicable Agreement states that if laid off employes desire to retain seniority rights, they "must file their name and address in writing with the appropriate division officer, with copy to District Chairman, within ten (10) calendar days of the date laid off, and renew same if address is changed during the period laid off." The Carrier had no record of a timely filed request on Claimant's behalf, and removed Claimant's name from the Seniority List. Additionally, the Organization did not have a copy of a timely filed request. The copy of Claimant's request, although dated September 5, 1982, was not received by the Organization until March 19, 1985, when Claimant presented the same to the Organization. The Carrier refused to return Claimant's name to the Seniority List and this Claim followed.

We note that aside from Claimant's bare assertion that he mailed his recall letter, there is no evidence in this record concerning the alleged sending of that letter. Even after the timeliness issue was joined, there was no evidence brought forward as to the circumstances under which Claimant allegedly acted in a timely fashion. The burden of proof lies with the party making the assertion that the notification was given in a timely fashion. Third Division Awards 25371; 20763. In this case, the burden is upon Claimant to demonstrate that he complied with the notification requirements of Article 3, Section (g) and did so in a timely fashion as required by that provision. Our close review of this record leads us to conclude that Claimant's burden has not been satisfied In this case. All that exists is Claimant's bare assertion that he mailed a recall letter. We cannot ascertain when Claimant mailed that letter. Balanced against Claimant's bare claim is the fact that neither the Carrier "or the Organization received the recall letter until two and one-half years after the notification was to be filed. Under the circumstances, the fact that the letter Claimant gave to the Organization in March, 1985, had the date of September 5, 1982, does not establish that Claimant, in fact, prepared and tendered the recall letter in a timely fashion as required by Article 3, Section (g). Without more, this record provides no basis to set aside the Carrier's action.

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 Employes involved in this dispute are respectively Carrier and Employes 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 27th day of February 1987.