

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 26863
Docket No. MS-27332
88-3-86-3-545

PARTIES TO DISPUTE: (Margaret L. Rogers
(Consolidated Rail Corporation

STATEMENT OF CLAIM: "Claim - System Docket CR-2986-D and Appeal
Docket No. 802"

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the **employee** or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The Claimant has alleged that the Carrier acted arbitrary and unjust in its denial of an Unjust Hearing to investigate her disqualification. Claimant requests an Unjust Hearing.

Having considered all the facts and the record presented, the Board concludes that the requisite proof has not been adduced to show that the Carrier violated the Agreement.

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 25th day of February 1988.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employes**
(National Railroad Passenger Corporation - (Amtrak)
Northeast Corridor

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

(1) The Carrier violated the Agreement when it terminated the seniority of Claimant **C. Trower** on September 16, 1985 (System File **NEC-BMWE-SD-1371**).

(2) The claimant shall be reinstated with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

At the time of the occurrence giving rise to the claim, Claimant, with an employment date of July 5, 1983, was employed as a Bridge and Building Mechanic. The record shows that on September 16, 1985, the Division Engineer wrote to the Claimant as follows:

"On August 21, 1985 you were provided with a Return to Duty Physical from Philadelphia Osteopathic Hospital, by your request. Our records **indicate** that you reported to the 32nd Street Headquarters on August 22, 1985 and discovered that your position had been abolished during your absence. You then went to the office of the Supervisor of Structures and reviewed the positions available on the board, and locations where your seniority would allow you to displace a junior employee. Since your departure from the Supervisor Structures office we have not heard from you, nor have you exercised your seniority.

In accordance with Rules 22 and 18 of the current Agreement between Amtrak and the Brotherhood of Maintenance of Way Employees, you had ten (10) days to exercise your seniority or file for furlough. You have failed to do either, and as a result of the self-invoking provisions of Rule 18, you have forfeited your seniority, and in effect terminated yourself from the services of this company.

Please arrange to turn in your rail pass, safety equipment, and any other company issued items. Any vacation time or monies due you will be forthcoming."

Claimant wrote to the Assistant Chief Engineer under date of September 19, 1985 requesting an appeal hearing. Such request was denied by letter dated October 16, 1985.

The Organization contended that the Claimant telephoned the Carrier on August 30, 1985, before the expiration of the ten day period, and marked off because he reinjured his back. The Organization asserted that the time that the Claimant was "off on disability" should not have been counted against the ten day period to exercise his seniority.

The Carrier refuted the Organization's assertion with a statement signed by the Clerk who the Claimant allegedly marked off with attesting to the fact that she received no such phone call on August 30, 1985, or on any date during the involved period. The Carrier also provided call-off log sheets in support of the Clerk's signed statement.

In any event, given the above dispute in facts, the Carrier argues that Rule 18 contains no exceptions, and whether Claimant did or did not mark off did not relieve him from his obligation to timely exercise his seniority or file for furlough.

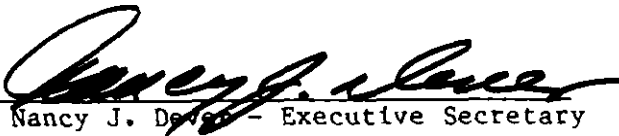
The Board has thoroughly studied Rules 18 and 22 in light of the varied interpretations advanced by the parties. We agree with the Carrier that Rule 18 contains no exceptions, and that Claimant was obligated to comply with its terms. Thus, the only issue presented on this record is whether the Organization proved by substantial evidence that the Claimant complied with Rule 18. Upon careful consideration of the entire record as developed on the property we conclude that the requisite proof has not been adduced to show that Claimant followed the course necessary to maintain his seniority. His failure to either exercise his seniority or file for furlough warranted the Carrier's action in removing his name from the seniority roster. Under the clear and unambiguous terms of Rule 18(d) the consequence of non-compliance is forfeiture of seniority. See Third Division Awards 24836, 24594, 24055, 20711 and 20371.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest::


Nancy J. Deves - Executive Secretary

Dated at Chicago, Illinois, this 25th day of February 1988.