

The Third Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Missouri-Kansas-Texas Railroad Company

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

The claim* as presented by General Chairman J. P. Self on August 30, 1985 to Division Engineer J. F. Masters shall be allowed as presented because the claim was not disallowed by Division Engineer J. F. Masters as contractually stipulated within Section 1(a) of Article 28 (System File 400-293-2579).

*The letter of claim will be reproduced within our initial submission."

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.

Claimant held seniority as a Track Laborer in Carrier's employ on District #5 in Houston, Texas. On November 30, 1984, he was furloughed. He did not displace a younger man within ten days, as required by Article 6, Rule 2, of the MofW Agreement and consequently lost his seniority. He returned to work on January 10, 1985, in District 5 as a Track Laborer on Gang 588 at Temple, Texas. At that point, he was considered a new hire and January 10, 1985, became his new seniority date.

On August 30, 1985, the General Chairman wrote Carrier protesting Carrier's establishing Claimant's seniority date as January 10, 1985, rather than November 17, 1980. Carrier did not answer the letter. On January 21, 1986, the General Chairman again wrote Carrier stating that since the Master Mechanic never answered the August 30, 1985, letter, the Claim should be allowed as requested. Carrier responded to this letter as follows:

"Mr. Juan D. Gallegos could have placed himself when furloughed on November 30, 1984 and his failure to do so automatically terminated his seniority in District 5 effective December 11, 1985 per Mr. H.M. Hacker's letter dated January 29, 1985, and copy to you.

The seniority roster was prepared as of June 1, 1985 (five months later) and mailed July 13, 1985. Since you and Mr. Gallegos were aware of Mr. Hacker's letter of January 29, 1986, copy attached, your claim is declined herewith."


This Board has reviewed the record and must conclude that the Organization has not carried its burden of proof in this instance. Its letter of August 30, 1985, does not constitute a legitimate Claim. Claimant, by his own failure to displace a younger man on November 30, 1984, forfeited his seniority. The August 30, 1985, letter does not change that fact. Forfeiture of seniority in such situations is automatic under the Agreement. A prompt answer by Carrier to the General Chairman's letter of August 30, 1985, protesting Claimant's new seniority day would have been courteous and sound labor relations policy, but the failure of Carrier to answer does not change the fact that Claimant automatically lost his seniority when he failed to displace a younger man within the ten days required.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 25th day of September 1989.