

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 28143
Docket No. MW-28028
89-3-87-3-790

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

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(The Atchison, Topeka and Santa Fe Railway Company

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. Lewis Hildreth from the Group 11, Class 1, System Steel Gang seniority roster within a letter dated September 10, 1986 (System File 170-2-8611/11-960-40-64).

(2) The September 10, 1986 letter addressed to Mr. Hildreth shall be rescinded and he shall have his seniority restored with the seniority dates he held prior to the violation referred to in Part (1) hereof and he shall be compensated for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."

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, who held seniority as a Trackman on the System Steel Gang Seniority Roster, had properly filed his name and address for recall purposes upon being furloughed.

On August 22, 1986, Carrier wrote Claimant to advise he was being recalled effective September 9, 1986, and gave him detailed reporting instructions. The letter stated failure to report would result in loss of seniority.

Claimant's address was a Post Office Box which he shared with family members. His sister-in-law picked up the mail but due to a series of misadventures, the recall letter never reached Claimant.

On September 10, 1986, Carrier notified Claimant by letter to the same Post Office Box that his seniority had been forfeited by his failure to report.

Rule 2 (c) provides in pertinent part:

"Employee(s) laid off in force reduction shall retain their seniority provided they (1) file their address in writing within fifteen (15) calendar days after being displaced; and (2) promptly report in writing any subsequent changes in their address. The reporting required herein must be addressed to the officers designated below:

* * *

Failure to meet any of the requirements as above specified, failure to report on the date indicated in the notification of recall, not to exceed fifteen (15) calendar days from date of notification of recall forwarded to the employee's last known address, without a satisfactory reason, will result in forfeiture of seniority in the class where recalled. When an employee forfeits seniority under this provision, he will be notified thereof, in writing, with copy to the General Chairman."

The Organization argues Claimant's failure to receive the August 22, 1986, recall letter constituted a satisfactory reason under Rule 2(c) for his failure to report. However, in all Awards it cited the failures to report timely could be said to have been caused or contributed to by Carriers' actions such as failure to provide necessary forms or by issuing ambiguous or confusing reporting dates or instructions.

No such element is present in this case. We have uniformly held rules such as Rule 2(c) to be self enforcing. As the evidence shows a properly addressed letter was sent to the address furnished by Claimant and was in fact received at that address, we have no choice but to deny this claim.

A W A R D


Claim denied.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 16th day of October 1989.