

The Third Division consisted of the regular members and in addition Referee Charlotte Gold when award was rendered.

PARTIES TO DISPUTE: ( Brotherhood of Railroad Signalmen  
(Grand Trunk Western Railroad Company

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Grand Trunk Western Railway Company (GTW):

(a) Carrier violated the parties' Schedule Agreement, as amended, particularly Rule 41, when on Tuesday, May 24, 1988, Carrier advised Claimant to the effect that he had relinquished his seniority on the parties' GTW Detroit seniority district for failure to comply with Rule 41.

(b) Carrier now be required to reinstate Gregory J. Wells, GTW No 382-74-6904, with seniority and other rights unimpaired retroactive to May 24, 1988, including making him whole for all wages and benefits lost from May 26, 1988 forward."

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 were given due notice of hearing thereon.

Carrier alleges that Claimant, a furloughed employee, failed to respond to recall in May, 1988, within the ten-day time period specified in Rule 41 of the governing Agreement and, as a consequence, forfeited any and all seniority rights that he may have established.

Claimant was furloughed in September 1987. A recall letter dated May 3, 1988, was sent to him on May 9. Carrier concluded that Claimant had until May 21 to respond and consequently sent him a letter on May 24, 1988, indicating that he had relinquished his seniority.

Claimant, on the other hand, pointed out that he was away on vacation in May (up to May 18, 1988), and that, while he picked up a Post Office notice from his Mother late on May 19 stating that there was a certified letter for him, he did not actually get the letter from the Post Office until May 24, 1988.

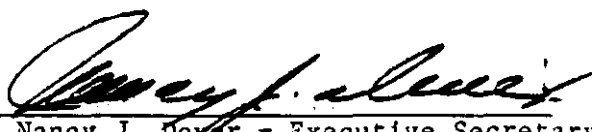
On May 22, Claimant had been called by the Assistant Supervisor of Signals, who asked him whether he had picked up his certified letter notifying him of a job opening in Detroit and asking if he would return to work. It was the Assistant Supervisor's impression that Claimant expressed no interest in returning at the time, while Claimant maintained that he wanted to return for service. Both men acknowledged that Claimant inquired of the Assistant Supervisor how much time he had to make a decision, although Claimant alleged that he was told that he had ten days from the receipt of the certified letter in which to respond, while the Assistant Supervisor reported that he said that "Rule 41 stated ten days to return to service, and that he should contact his union representative...."

This Board has carefully reviewed the facts of this case and finds that there were sufficient mitigating circumstances present here to respond to Carrier by its deadline. At the same time, we cannot conclude that Claimant was dilatory in replying. The fact that he inquired about the time limit for responding indicates to us that he was seeking to comply with applicable regulations and that he had not made a decision not to seek reemployment with Carrier. Any interpretation of the time limits in Rule 41 must be made in light of reasonable expectations for compliance. Under all the circumstances present here, we must conclude that there are grounds for sustaining the Claim. Claimant shall be reinstated with seniority and other rights unimpaired retroactive to May 24, 1988, with backpay retroactive to May 26, 1988, less any outside earnings.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:   
Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 28th day of March 1991.