

The Third Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes  
(Davenport, Rock Island and North Western Railway Company

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

(1) The Agreement was violated when the Carrier terminated the seniority of Mr. F. Reyes within a letter dated November 2, 1987 (System File C-88-S040-3).

(2) Mr. F. Reyes shall be returned to service with seniority and all other rights unimpaired."

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.

The basic facts in this case are set forth as follows: Claimant established seniority in the Maintenance of Way and Structures Department circa 1971. In May 1987, he was furloughed from service due to a force reduction and he filed his name and address with Carrier on May 20, 1987, in accordance with the requirements of Rules 8A and B. (Retaining Seniority). He returned to work on May 28, 1987, and worked through October 16, 1987 when he was again laid off. Meanwhile by letter dated November 2, 1987, the Assistant General Manager, Corporate Secretary and Treasurer notified the Local BMWE Chairman that Claimant and another employee did not file ("sign") their names and addresses as per Rules 8A and B within ten (10) days after layoff and accordingly, consistent with said Rules both employees forfeited their seniority. Consequently, they would no longer be called to duty. Rules 8A and B read as follows:

"RULE 8. RETAINING SENIORITY

A. When an employee laid off in force reduction desires to retain his seniority rights without displacing a junior employee, he must, within ten (10) days file his name and address in writing with the Roadmaster or other corresponding officer, with copy to the General Chairman. Such written notice must be given in duplicate and the officer to whom it is addressed will return one copy receipted to the employee. The employee must notify the officer to whom notice is given of any change in address. When forces are increased he will be notified and will return to service within ten (10) days thereafter. Failure to file his name and address or failure to return to service within ten (10) days, unless prevented by sickness or other unavoidable cause, will result in loss of all seniority rights. If the employee returns to the service and has complied with the provisions of this rule his seniority will be cumulated during the period of his absence.

B. If an employee laid off in force reduction, who has filed his name and address in conformity with Paragraph A of this rule, is re-employed temporarily for thirty (30) days or less, such employee need not again file his name and address as provided in Paragraph A but his seniority is protected by his original filing. If, however, such temporary employment extends for more than thirty (30) days, the employee must again file his name and address in order to protect his seniority under the provisions of Paragraph A of this rule."

In response to this action, the Local Chairman wrote a letter to the aforesaid official on November 4, 1987, wherein he noted that Claimant assumed his filing on May 20, 1987, complied with Rules 8A and B and also requested that Carrier give Claimant a second chance.

By letter dated November 10, 1987, Carrier's official denied this request on the grounds that failure to sign up was a clear violation of the Agreement. The General Chairman appealed this decision by letter dated December 9, 1987, and indicated in said appeal that since Claimant was recalled for two (2) days, he was not required to submit another lay off slip under Rule 8B.

Carrier disputed this assertion by letter dated February 2, 1988, arguing instead that he worked in excess of thirty (30) days before being laid off.

By letter dated July 21, 1988, the Assistant General Chairman-Secretary-Treasurer petitioned Carrier's General Manager to accord Claimant managerial leniency and noted that said action would not be precedential.

The General Manager responded to this request on July 25, 1988, and stated that he would arrange to have Claimant present his appeal to the Disciplinary Committee as soon as possible. He also indicated that he would be governed by the decision of said Committee. By letter dated October 28, 1988, to the General Manager, the General Chairman noted his confirmation that the time limits of this Claim would be extended to January 6, 1989, but by letter dated November 14, 1988, the General Chairman withdrew his leniency request and premised his defense of the Claim on his prior arguments. He wrote in pertinent part:

"This is to advise we are withdrawing our request for reinstatement on a leniency basis and wish to progress it as a claim in Mr. Reyes behalf due to the fact that Carrier has erred in its handling and has in fact violated Rules 8 A and B of the Agreement.

As stated in Mr. Joynt's letter of December 9, 1987, Mr. Reyes was in compliance due to the fact that upon being laid off he was then recalled for two (2) days and Mr. Reyes was under the impression that Rule 8 B then nullified his requirement to again file his name and address in accordance with Rule 8 A."

By letter dated January 4, 1989, the General Manager responded as follows: (in pertinent part)

"The fact is that Mr. Reyes was recalled not for two days, but was recalled and worked in excess of thirty (30) days, approximately two months, before being laid off. Mr. Reyes was made fully aware of his obligations for sign up at the time he was laid off. He did not comply with those provisions at any time, despite coming to the office on several occasions. Furthermore, as I advised Mr. D.D. Joynt in my letter of July 25, 1988, I set up a meeting with Mr. Reyes so that he could appeal his case to the disciplinary committee. Mr. Reyes never showed up for that meeting, nor did he ever contact me after I had advised him that I would allow him to issue his appeal to the disciplinary committee."

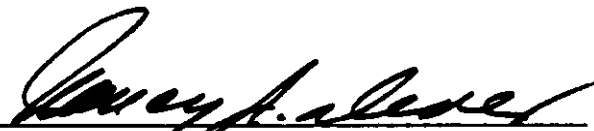
In considering this dispute, particularly, the Organization's factual assertion that Claimant was recalled for two (2) days and thus under no mandate to file his name and address, the Board finds no evidence that said representation is accurate. Rather, we find that he worked in excess of thirty days when he was recalled, and, as such, consistent with the explicit self-executing provisions of Rules 8A and B he was required to file his name and address again. Since Carrier did not wish to condone his inadvertence, it had the right under Rules 8A and B to enforce the contingency penalty of said Rules. We would hope, however, that notwithstanding our ruling herein, which is predicated upon unambiguous contract construction, that Carrier would consider his petition for seniority reinstatement. His employment record indicates that he was a competent, non-problemsome employee.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 30th day of April 1991.