

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29516
Docket No. MS-29380
93-3-90-3-314

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

(R. M. McSwain
PARTIES TO DISPUTE: (
(Burlington Northern Railroad

STATEMENT OF CLAIM:

"I, Richard McSwain, wish to attain my position employment with Burlington Northern Railroad on the grounds that by being a recovering alcoholic and requested that I be sent to a rehabilitation to overcome my dependance on alcohol. My request was denied leaving me to continue to fight my dependance without the help I required. You can verify my request and the outcome with Darrell Brown who was my foreman at the time. I am also seeking reinstatement on the grounds that I was released from my employment due to my failure to file a Rule 9 within the time allowed by the union which was caused by a misunderstanding on my part as to the 10 day rule interpreted as 10 working days not 10 calendar days, which will be explained when I am able to present the facts in the following paragraphs...."

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 notice of hearing thereon.

By Notice dated December 8, 1988, Claimant, a Grinder Operator, was informed that his position would be abolished effective the close of his shift on December 15, 1988. Under Rule 8, Section F, of the Agreement, employees who wish to displace junior employees must exercise their seniority rights within ten calendar days of the abolition:

"F. Employees affected by force reduction or abolition of positions...must, if they desire to displace junior employees, exercise their seniority rights within ten (10) calendar days thereafter. If seniority is not so exercised, such employees will forfeit all rights to displace other employees because of such force reduction or abolition of positions, and will then be governed by Rule 9."

On December 27, 1988, Claimant indicated his intent to displace a junior employee in Pasco, Washington, effective December 28, 1988. The displacement was disallowed by Carrier, which alleged that because of Claimant's failure to act within the ten-day period mandated by Rule 8, he had forfeited his displacement rights. Because he also failed to indicate that he wished to retain his seniority rights within ten calendar days. In accordance with Rule 9, Claimant was considered to be out of the service of Carrier.

Rule 9 reads in pertinent part as follows:

"When an employee laid off by reason of force reduction desires to retain his seniority rights, he must, within ten (10) calendar days of date so affected, file his name and address in writing on the form supplied for that purpose,....Failure to file his name and address or failure to return to service within ten (10) calendar days, unless prevented by sickness, or unless satisfactory reason is given for not doing so, will result in loss of all seniority rights."

Claimant contends, in his defense before this Board, that he misunderstood the ten-day Rule, assuming that he had ten working days in which to act, rather than ten calendar days. While this appears to be a new argument, the Board has no basis for disputing Claimant's contention. The fact remains, however, that the language of Rule 8 is clear on its face and open to no interpretation other than the one applied by Carrier. Both Rules 8 and 9 are self-invoking. Rule 9 triggers the forfeiture of seniority rights as the result of an employee's failure to act within the requisite time period.

Claimant neither indicated his intent to displace a junior employee nor filed his name and address in order to revert to furlough status within prescribed time limits. This Board has no other option but to conclude that his claim must be denied.

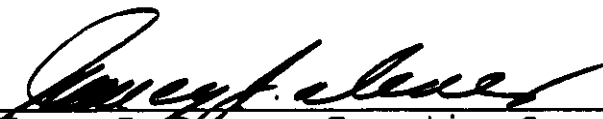
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A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 3rd day of February 1993.