

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 30880
Docket No. CL-30608
95-3-92-3-396

The Third Division consisted of the regular members and in addition Referee Martin F. Scheinman when award was rendered.

(Transportation Communications
(International Union
PARTIES TO DISPUTE: (
(Atchison, Topeka & Santa Fe Railway
(Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Organization (GL-10807) that:

(a) Carrier violated the current Clerks' Agreement at Temple, Texas, when it improperly removed Claimant Butler's name from the 1990 Southern Division Station Department Seniority Roster, and

(b) Claimant M. R. Butler's name shall now be returned to the 1990 Southern Division Station Department Seniority Roster in the same relative standing as shown on the 1989 Southern Division Station Department Seniority Roster and compensated for any day for which she failed to be called for service, as a result of this 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 employee or employees involved in this dispute are respectively carrier and employee 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.

This claim advanced by the Organization stems from Carrier removing Claimant's name from the 1990 Southern Division Station Department Seniority Roster due to her alleged failure to comply with Rule 17-B of the Agreement by not providing Carrier her current address in December 1989. Rule 17- B states as follows:

"Employees who become off-in-force-reduction must promptly advise their employing officer of their current address (unless their current address is on file) and promptly advise of subsequent changes therein. Employees off-in-force-reduction, who do not perform service under this Agreement during a calendar year, must file their current address with their employing officer during the month of December of such calendar year and failure to file in December shall result in forfeiture of all seniority rights."

The Organization argues that Claimant did mail her current address to Carrier by letter dated December 17, 1989. It urges that Claimant's version is supported by letter of February 27, 1991, from coworker Lee, stating that he observed Claimant in the Post Office in Temple, Texas, on December 17, 1989, and that Claimant informed him that day that she was at the Post Office mailing her Rule 17-B notice. The Organization claims that another statement of the same date, from coworker Mabry also corroborates Claimant's version.

Thus, the Organization insists that Claimant complied with the dictates of Rule 17-B. It maintains that Carrier acted improperly in removing Claimant's name from the Seniority List without doing more to ascertain Claimant's whereabouts before taking the disputed action. In all, it asks that Carrier be directed to compensate Claimant for each day she failed to be called in for service.

Carrier, on the other hand, argues that it did not violate the Agreement. It insists that Claimant, who had been off-in-force reduction since December 5, 1988, failed to file her current address as required. Carrier maintains that its records contain no such notice on file in the Division Manager's office. It also urges that the statements from coworkers do not support Claimant's assertion that she complied with Rule 17-B.

Carrier argues that its treatment of Claimant for non-compliance with Rule 17-B is supported by numerous Board Awards, see for example Third Division Awards 17596, 17718, 20371 and 21539. Therefore, Carrier asks that the claim be denied.

After careful review of the relevant and properly submitted evidence, we conclude that the claim be sustained in part. Based upon the very unique facts presented, and without precedent to other Rule 17-B cases that may arise, we are persuaded that Claimant's assertion about mailing the notice is credible. Yet, we conclude that the notice did not arrive at Carrier's place of business.

For these reasons, we conclude that Claimant's name shall again be placed on the Seniority List, without loss of seniority. However, given that we also determine the blame for Carrier's failure to receive the mailing was occasioned by Claimant's method of communication with Carrier, we reject any claim for monetary damages.

One final point. Claimant's difficulties here could have been obviated simply by sending the notice by certified mail, return receipt. Had this been done, she would have had proof of receipt. Similarly, Claimant would have known relatively quickly that the notice was not received, and could have, in a timely fashion, resubmitted her Rule 17-B notice.

This is not to suggest that all Rule 17-B notices must be sent by certified mail, return receipt in the future. However, individuals who fail to send such notice by certified mail, return receipt do so at their own peril. That is, without the necessary receipt they may well be unable to establish that the notice was sent. In such cases, it is reasonable to believe that Carrier would conclude that noncompliance with Rule 17-B has occurred.

Nevertheless, for all of the foregoing, the claim is sustained in part.

AWARD

Claim sustained in accordance with the Findings.

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O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 10th day of May 1995.