

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31210
Docket No. MW-31570
95-3-93-3-575

The Third Division consisted of the regular members and in addition Referee Robert L. Hicks when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Consolidated Rail Corporation

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

- (1) The Agreement was violated when the Carrier improperly terminated the seniority of Mr. M.L. Goosby on September 17, 1991 for failure to return to service following recall (System Docket MW-2564).
- (2) As a consequence of the violation referred to in Part (1) above, Mr. M.L. Goosby shall be '... fully restored to service with all roster rights....'"

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.

Claimant was deemed an automatic bidder pursuant to the Agreement and was sent a recall letter to the address Carrier had on file as of August 6, 1991. The recall letter was returned to Carrier as undelivered.

Carrier sent Claimant a second letter to the same address advising him that he had forfeited his seniority for failing to respond to recall. This letter was also returned by the Postal Department as undelivered.

Claimant contends that he was unaware of the recall and the forfeiture letter until February of 1992. Claimant contends in writing that on April 19, 1990, he did write the Division Engineer at Pittsburgh, Pennsylvania, advising of his change of address. He further stated also in writing that he verbally corrected his address with someone in the Division Engineer's Office in September of 1990.

Rule 4, Section 2(c), relative to retaining seniority while furloughed reads as follows:

"*** furloughed employees desiring to protect their seniority will keep their correct address on file with the Company and the General Chairman." (underscoring added)

Even though the claim was handled by the General Chairman, to its conclusion on the property, never, at any time has the General Chairman advised that Claimant notified his office of the address change. Such omission lends itself to Carrier's position that Claimant did not file an address change when he said he did, despite the copy of the letter that was supposed to have been mailed on April 19, 1990.

Claimant did not comply with the provisions of Rule 4, Section 2(c).

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 1st day of November 1995.

LABOR MEMBER'S DISSENT
TO
AWARD 31210, DOCKET MW-31570
(Referee Hicks)

The Organization is impelled to dissent to the Majority's findings because it is apparent that such findings were rooted in argument that was not part of the on-property handling of this case. The on-property facts in this case are: (1) the Claimant stated that he had written the Carrier and informed it that he had changed his address as per Rule 4, Section 2(c) on April 19, 1990; (2) the Claimant subsequently called about available work and again informed the Division Engineer's office of his change of address; and (3) the Claimant never received a recall to the position in question. Although the Carrier maintains that it did not receive the Claimant's April 19, 1990 letter until nearly two (2) years later, its Exhibit No. 10 to its submission to the Board clearly shows otherwise. In the upper right-hand corner of the exhibit, there appears to be a fill-in-the-blank stamp which shows the Claimant's employe number, initials, document code and document date. Evidently, the Division Engineer did not forward the Claimant's change of address to the Labor Relations and Personnel Departments until February 18, 1992, nearly two (2) years after receiving said letter. The Claimant's seniority and all of the benefits associated therewith were hinged on the Division Engineer forwarding the change of address information to the Personnel Department. The record also reveals that more than five (5) months after the Claimant changed his address, he called the Carrier to inquire

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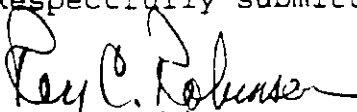
about work opportunities and again informed the Division Engineer's office of his new address. The Majority, however, held that inasmuch as there was no evidence that the General Chairman was advised of the Claimant's change of address, he must not have changed his address as he claimed. The problem here is that such an allegation was never raised during the handling of this dispute on the property. The only probative evidence in the record was provided by the Organization. Such evidence consisted of a written statement detailing what the Claimant did to notify the Carrier of his change of address. The Carrier never came forward with any evidence to the contrary while this case was being progressed on the property. Then to make matters worse, the Majority decided the outcome of the case on a theory that was never discussed during the on-property handling.

Lastly, a review of Rule 4, Section 2(c) reveals that an employee must keep his correct address on file with the Carrier and General Chairman. There is no contractual mandate requiring the Claimant to use any specific means in order to comply with Rule 4, Section 2(c). Hence, the telephone call the Claimant made to the Carrier months after his furlough would have satisfied the requirements of the rule. The end result of the Board's error here was that the Claimant was denied his seniority and all benefits associ-

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ated therewith. The outcome of this award was based on erroneous findings, is of no probative value and, therefore, I dissent.

Respectfully submitted,


Roy C. Robinson
Labor Member