

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31364
Docket No. MW-31981
96-3-94-3-339

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

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

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

1. The Agreement was violated when the Carrier omitted the name of Mr. B. E. Marker from the 1992 BMW Inter-regional District No. 2 Trackman's Seniority Roster and thereafter failed and refused to correct same (System Docket MW 2945).
2. As a consequence of the violation referred to in Part (1) above, Claimant B. E. Marker's seniority date of April 12, 1977 shall be restored to its appropriate roster standing on the BMW Inter-regional District No. 2 Trackman's Seniority Roster."

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 first acquired seniority as a trackman on April 12, 1977. He was furloughed in November 1980. On July 6, 1981, he forfeited all of his inter-regional seniority under the self-executing provisions of Rule 3-D-4, although he retained his local seniority in accordance with the exception provided in Rule

3-D-4 of the 1945 Agreement. On November 1, 1982, Claimant was recalled to service. He claims that this was the first occasion that he became aware that he was not being carried on the Inter-regional Seniority Roster, and the claim before this Board asks that his name be restored to that roster with his original date.

Claimant's request to have his seniority restored is patently without merit. His name has not been on the roster for eleven years. It is his burden to demonstrate that the name was some how removed in error and that a valid excuse existed for his failure to protest the error within 90 days of the posting of the first roster that did not include his name. Neither factor has been adequately addressed in this record.

AWARD

Claim denied.

ORDER

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

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 29th day of February 1996.

LABOR MEMBER'S DISSENT
TO
AWARD 31364, DOCKET MW-31981
(Referee Fletcher)

The Majority clearly erred in this award and a reading thereof readily establishes the flawed reasoning. Consequently, a detailed discussion is not necessary here.

However, it is important to point out that the Majority clearly erred when it failed and refused to realize that this Claimant had been furloughed since November of 1980. While it may be hard to believe that an employee would be furloughed for more than twelve (12) years, the fact remains that he was. The record reveals that while he was furloughed, he allegedly forfeited his inter-regional seniority. Once the Claimant was recalled to service on November 1, 1992, he was made aware that his inter-regional seniority had been revoked in accordance with Rule 3-D-4 of the 1945 Agreement. In accordance with Rule 4, Section 6(b) of the current Agreement, the Claimant was entitled to protest the removal of his inter-regional seniority. Rule 4, Section 6(b) reads:

"RULE 4 - SENIORITY

* * *

Section 6. Seniority rosters.

* * *

(b) Employees shall have 90 days from the date the roster is posted to file a protest, in writing, with the designated officer of the Company, with copy furnished the General Chairman and local representative. Employees


Labor Member's Dissent
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"off duty on leave of absence, furlough, sickness, disability, jury duty or suspension at the time the roster is posted, will have not less than 90 days from the date they return to duty to enter protest."

An uncomplicated reading of Rule 4, Section 6(b) reveals that inasmuch as the Claimant had been on furlough, he was entitled to protest the removal of his name from the inter-regional roster within ninety (90) days of his return to service. The record is crystal clear that the Claimant's inter-regional seniority had been removed after he was furloughed in November of 1980. In accordance with Rule 4, Section 6(b), the Claimant had ninety (90) days from the date he was recalled to protest the removal of his inter-regional seniority. The Majority's failure to consider the Claimant's seniority roster protest based on his alleged failure to protest the removal within ninety (90) days of its posting rather than ninety (90) days of his return to service is a monumental error and not in accordance with the crystal clear provisions of the Agreement.

Therefore, I dissent.

Respectfully submitted,


Roy Q. Robinson
Labor Member