

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31958
Docket No. MS-32248
97-3-95-3-52**

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

(Nicholas B. Galotti

PARTIES TO DISPUTE: (

(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"I was awarded a position of Trackman, headquarted (sic) at Utica, N.Y., effective June 15, 1992.

I called to inform the assignment (sic) clerk for Conrail in Selkirk N.Y. that I was unable to cover the position of Trackman because I was on Workers Compensation Disability (sic). The date of the recall was June 4, 1992. I was on Workers Compensation Disability from 4/21/92 to 7/23/92.

I was called back to work by B&B Supervisor, John Miko, in April 1993. I was informed that I had been removed from the B & B Roster and lost all my seniority.

Also, a letter dated June 17, 1993 from Conrail manager, Labor Relations, S.R. Friedman stated that my seniority date was June 21, 1975. I did not start working for Conrail until November 28, 1976 and that was in the Track Department. My seniority date for B&B Mechanical roster was June 21, 1978.

I request not only that I get back my seniority but, also back wages from the time that I was called by B&B Supervisor John Miko in April, 1993."

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 were given due notice of hearing thereon.

This claim arose when the Claimant's name was removed from BMW seniority rosters.

On June 4, 1992, the Claimant was recalled from furlough and awarded a Trackman position. The Claimant did not respond to the recall, and therefore, the Carrier determined that the Claimant had forfeited all BMW seniority pursuant to Rule 4. When his name did not appear on a B&B seniority roster on April 1, 1993, the Organization listed the instant claim before Public Law Board No. 3781. During discussions between the Organization and the Carrier, the Organization notified the Carrier that it would no longer pursue this claim and was withdrawing from the handling of same. The Carrier agreed to a 90 day time limit extension allowing the Claimant to pursue the claim on his own.

On January 31, 1995, the Claimant listed the instant claim with the Third Division. The Claimant argues that in May 1990 he took a return-from-furlough physical and qualified for work, but with restrictions. He attempted to secure his B&B position but his supervisor allegedly refused to allow the Claimant to work with restrictions. The Claimant contends that he did not respond to the Trackman recall notice because he felt that he would not qualify because of his physical disability. Furthermore, he assumed that his position with the B&B Department would be secure and that he would be recalled when a position for which he was physically qualified became available .

This Board reviewed the record in this case and we find that the Claimant failed to properly respond to the recall as required by the Rule. There is no question that the Claimant was properly recalled via the June 4, 1992 letter. Claimant forfeited his seniority pursuant to Rule 4, Section 3 and was specifically advised of that by a letter dated June 19, 1992. There is no dispute that the Claimant failed to respond to the recall letter.

The controlling language is in Section 3 of Rule 4 entitled, "Return to Service." It states:

"An employee not in service will be subject to return to work from furlough in seniority order to any class in which he holds seniority in his working zone (either divisional or inter-regional). If he fails to return to service within ten (10) days from date notified by certified mail to his last recorded address for a position or vacancy of thirty (30) days or more duration, he will forfeit all seniority under this Agreement."

In the recall letter dated June 4, 1992, the Claimant was told:

"Failure to report promptly in accordance with Rule 4, Section 3 of the Schedule Agreement could result in the forfeiture of all of your BMW seniority."

The Claimant failed to respond to the recall notice, and this Board has ruled on numerous occasions that a failure to respond to a recall automatically leads to the loss of all seniority.

For all of the above reasons, the claim must be denied.

AWARD

Claim denied.

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ORDER

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

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 19th day of March 1997.