

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32023
Docket No. MS-32232
97-3-95-3-40**

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

(Velma Lamar

PARTIES TO DISPUTE: (

(Illinois Central Railroad

STATEMENT OF CLAIM:

- “(1) Carrier violated the agreement between the parties, when on January 24, 1992, it terminated my seniority.**
- (2) Carrier shall compensate me a day's pay of \$115.33 per day, effective sixty days prior to their receipt of District Chairman E. M. Parker's letter dated January 18, 1994, continuing five (5) days per week until I am placed on the Extra Board and allowed to perform extra work in line with my seniority.”**

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.

Claimant was hired as an Extra Clerk in Memphis in November 1978. She performed extra work at Central Station, the piggyback ramp, and the yard office. In

1985, approximately seven jobs were abolished in Memphis and 29 more were abolished in 1986. Of those displaced employees, five were placed on the Extra Board. All were senior to Claimant. Claimant was not on the Guaranteed Extra Board. Additional abolishments placed Claimant even further down on the roster. She worked her last day on January 24, 1987. By that time there was an Extra Board of nearly 50 people. Some time in early 1987, Extra Clerks were permitted to take a furlough by making a written request. Claimant maintains that she made no such request, and there is no evidence on the record to contradict her.

In January 1992, Carrier issued Form F-1594 terminating Claimant's seniority under the provisions of Rule 15 of the Agreement. Rule 15 reads in pertinent part as follows:

"(e) Employees whose positions are abolished or who are displaced, and whose seniority rights entitle them to a regular position, shall assert such rights within twenty days from the date actually affected, or forfeit their seniority rights except that employees having insufficient seniority to displace at the station or terminal where they were employed prior to their displacement and who do not or cannot displace on positions at other points will be considered furloughed.

Example:

An employee who is displaced or whose position is abolished and who:

*** * ***

(4) cannot displace at any point on his seniority district, will be considered furloughed.

*** * ***

(h) Furloughed employees who do not render service under this agreement for a period of five years forfeit all seniority rights."

Claimant acknowledged that she was aware of Form F-1594 having been issued. On January 18, 1994, Claimant, through her Organization, protested that she was not properly listed as a furloughed employee and was therefore not covered by Rule 15 (h). Thus, according to Claimant the Carrier had no right to terminate her on January 24, 1992. That claim was denied and subsequently progressed on the property, including a conference, which took place on January 13, 1995. For reasons not enunciated on this record, Claimant progressed the claim *pro se* to this Board by letter of January 21, 1995.

Claimant maintains that because she was furloughed erroneously (she maintains she did not request it) she is exempt from the provisions of Rule 15(h). She further asserts that because this constitutes a "continuing violation," she is entitled to compensation as of 60 days prior to the Organization's original claim date of January 18, 1994.

It is the position of the Carrier that Rule 15(h) is self-executing. Thus as an employee who had not worked in five years, the Claimant was properly terminated by the Carrier.

Rule 15(h) is clear and unambiguous. It provides that furloughed employees not rendering service under this Agreement for five years forfeit their seniority rights. By Claimant's own admission, she was so far down on the roster that she could not reasonably hope to work once the 1986 and 1987 abolishments took place. Accordingly, the Carrier logically, and in conformation with Rule 15, listed her as furloughed. Claimant's termination was in the nature of a "no fault" dismissal, and is supported by the language of Rule 15. The Board finds no basis for sustaining the instant claim.

AWARD

Claim denied.

Form 1
Page 4

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Docket No. MS-32232
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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 6th day of May 1997.