

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 32053  
Docket No. CL-31857  
97-3-94-3-174**

**The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.**

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

**STATEMENT OF CLAIM:**

**"Claim of the System Committee of the Organization (GL-11026) that:**

- (a) Carrier violated the provisions of the current Clerks' Agreement at Euless, Texas, on March 1, 1993, when it improperly removed Claimant Tucker's name from the Middle Division Station Department Seniority District, and Carrier's refusal to accept a timely bid on Zoned Extra Board Position Nos. 6402, 6404, 6405, and 6413 which was assigned to junior employees, and Zoned Extra Board Positions 6406, 6407, 6408, 6049, and 6410 which went to no bids as advertised on February 24, 1993, and assigned on a system-wide basis on March 2, 1993, and**
- (b) Claimant Tucker's name shall now be returned to the Middle Division Station Department Seniority District in its relative proper standing and assigned to one of the aforementioned Zoned Extra Board Positions in the Crew Management Office at Topeka, Kansas and be compensated five (5) days at the Zone Extra Board rate for each work week beginning March 22, 1993, and continuing until the violation is corrected, and**
- (c) Claimant Tucker shall also be paid in addition to compensation claimed in (b) above, a make whole**

*compensation on money claimed of twelve (12) percent per annum until claim is paid."*

**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.

After commencing a term in prison on March 5, 1990, the Claimant was subject to an Investigative Hearing on March 22, 1990, which Hearing proceeded in his absence. As a result of the Hearing, the Claimant was dismissed from service. The disciplinary action was appealed, and, on November 20, 1991, Special Board of Adjustment No. 1031. Award 18 reinstated the Claimant with seniority unimpaired.

The Carrier complied with the Award, adding the Carrier's name to the appropriate seniority roster as of January 1, 1992. Notification to return to work, sent by the Carrier on February 27, 1992, was returned unclaimed. This was not surprising, since the Claimant remained incarcerated, as was apparently generally known.

In February 1993, just prior to his release from prison, the Claimant wrote to the Carrier, bidding on a number of positions (some of which his seniority would have entitled him to obtain). On March 1, 1993, the Carrier wrote to the Claimant as follows:

*"Reference your letter of February 24, declaring yourself available for service with this company:*

*Your failure to furnish your current address during the month of December 1992, under the provisions of Rule 17 of the current agreement*

resulted in the removal of your name from the Station Department Seniority Roster for the former Middle Division. You, therefore, no longer have an employment relationship with this company."

Rule 17-B reads in pertinent part as follows:

"... Employees off-in-force reduction [which the parties agree was the Claimant's status] who do not perform service under the 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."

A claim on the Claimant's behalf was initiated on April 23, 1993. The Carrier states first that the claim should be rejected on procedural grounds, since the claim concerned the omission of the Claimant's name from the seniority roster allegedly issued January 1, 1993. This, says the Carrier, is in excess of the 60 day limit for initiation of claims.

The Board finds the Carrier's procedural position without merit. There is no basis to determine that the Claimant had knowledge of his removal from the seniority roster prior to receipt of the Carrier's March 1 letter. The claim was initiated within 60 days thereafter. Furthermore, the record includes no copy of the cited roster, so the Board cannot determine when such was received by the Organization and indeed whether it omitted the Claimant's name.

The Organization argues that Rule 17-B was unfairly applied against the Claimant, since the Carrier was or should have been aware of the Claimant's incarceration in December 1993. The Organization views the Carrier's action simply as retaliation for the Award reinstating the Claimant after a previous attempted dismissal action.

The Carrier replies that the application of Rule 17-B came more than a year after the Claimant's reinstatement; that the Claimant was familiar with the requirement, having used it in the past; that other names are dropped from the roster in similar fashion, so the Claimant did not receive disparate treatment; and that Rule 17-B is self-effectuating and cannot be disturbed by the Board.

Regardless of what may or may not have been the Carrier's attitude toward the Claimant's reinstatement, the Board may not factor this in to a determination as to the plain meaning and application of Rule 17-B. Since the Claimant applied for specific positions prior to his prison release, he was obviously aware of his position as a reinstated, but unassigned employee. It follows that he could properly be held to the Rule 17-B requirement. By failing to meet this requirement, the result was "forfeiture of all seniority rights."

**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.**

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

**Dated at Chicago, Illinois, this 10th day of June 1997.**