

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32134
Docket No. HR-32806
97-3-96-3-127**

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

**(Hotel Employees & Restaurant Employees
(International Union
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company**

STATEMENT OF CLAIM:

- "(1) Carrier violated the Agreement, when on May 31, 1995 it terminated Employee's employment without a fair and impartial hearing.**
- (2) Carrier wrongfully invoked Rule 10, Part 11 of the Schedule of Rules.**
- (3) Carrier shall now return Employee to service, with vacation, seniority, and all other rights unimpaired, and shall compensate Employee for all time lost as a result of Carrier's actions."**

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.

At the time this dispute arose, Claimant was on furlough. By certified letter dated May 16, 1995, the Carrier wrote Claimant that "you are hereby notified to contact the Omaha Commissary Services Department concerning an assignment to the concrete tie gang 9060 at Caliente, California." Claimant's recall was to a Helper's position. Claimant signed for the letter on May 22, 1995.

Rule 10 states, in pertinent part, that "[f]ailure to report for duty within seven days from date of notification at last address given, and to give satisfactory reason for not reporting, will forthwith terminate an employee's employment relation" Claimant did not report for duty by May 29, 1995. Instead, because Claimant previously worked as a Manager, Claimant attempted to reach the Organization to determine whether the instruction to report as a Helper was appropriate. On May 31, 1995, Claimant reached the Organization and was advised she should return to service as directed. However, Claimant was not allowed to return to duty.

Rule 10 is self-executing. If an employee is notified of recall and fails to report within seven days, the failure to report will "terminate an employee's employment relation." That is what happened here. Claimant was notified on May 22, 1995 that she had to report. Under Rule 10, Claimant had until May 29, 1995 to do so. However, Claimant did not report by that date. Claimant's inaction therefore terminated her employment relationship with the Carrier. If Claimant had a question about the propriety of the recall, her obligation was to report and then grieve the recall.

Claimant was not entitled to an Investigation. Rule 1 entitles employees who are "suspended or dismissed" to a "fair and impartial hearing." Claimant was neither "suspended or dismissed." When Claimant failed to report within the designated time, by operation of the self-executing provisions of Rule 10 Claimant terminated her own seniority. In effect, when Claimant failed to timely report, she quit.

The Carrier's other arguments need not be addressed. Notwithstanding the Organization's efforts on Claimant's behalf, we have no choice but to deny the claim.

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 13th day of August 1997.