

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32499
Docket No. MS-32770
98-3-96-3-85

The Third Division consisted of the regular members and in addition Referee Hyman Cohen when award was rendered.

(Gerald J. Scheetz

PARTIES TO DISPUTE: (

(Burlington Northern Santa Fe Railroad

STATEMENT OF CLAIM:

“Claim Number S-P-522-0”

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.

By certified letter, dated March 28, 1994, the Carrier informed the Claimant that due to his “failure to comply with the provisions of Rule 9 [his] records have been closed effective this date.” The Claimant acknowledged receipt of the March 28 letter on April 9, 1994. On June 14, 1994 the Organization sent a letter to the Carrier appealing the removal of the Claimant’s seniority rights under Rule 9.

The Claimant was on furlough status and had filed his name and address in accordance with Rule 9. On March 3, 1994, the Carrier’s Manpower Planning Office telephoned the Claimant to advise him of his recall to service. The Claimant was given

“the details of the crew including the start date” of March 14, 1994. Furthermore, in a handwritten note to Manager of Manpower Planning, Graves stated that in his conversation with the Claimant he told him that he could contact Roadmaster Christ, if “he had additional questions.” According to Graves, the Claimant told him that “he would show,” or in other words, report as ordered.

The following day, March 4, the verbal instructions of Graves were formalized in writing by Martin and sent by certified mail to the Claimant. On March 7, 1994 the U. S. Postal Service delivered the certified letter to the Claimant’s residence. Since the Claimant was not at home to accept delivery, the Postal Service left a notice informing the Claimant that an attempt was made to deliver a letter from the Carrier.

On March 28, 1994, the Claimant stated that he left Christ a telephone message requesting additional time to report. Christ returned the Claimant’s call the following day, March 29 and advised him that the Carrier had already sent him notification that his employment had been terminated.

Rule 9, in relevant part, provides as follows:

“. . . Failure to return to service within ten (10) calendar days, unless prevented by sickness or unless satisfactory reason is given for not doing so, will result in loss of all seniority rights.”

Note 1 of the Rule 9 provides:

“. . . Employees called back to service in accordance with provisions of Rule 9 must report at starting time of shift to which called within ten (10) calendar days.”

Rule 9 is self-explanatory. If an employee fails to return to service within ten calendar days, unless he is prevented from doing so by sickness or a satisfactory reason is given for not doing so, it “will result in loss of all seniority rights.” Note 1 merely confirms that clear and unequivocal terms set forth in Rule 9.

The record establishes that the Carrier telephoned the Claimant on March 3 to notify him to report for service in Ritzville, Washington, at 9:30 A.M. on March 14. The Claimant failed to report to work on March 14.

According to the appeal filed by the Organization on June 14, 1994, the Claimant received and signed for the Carrier's certified letter of recall, on March 22, 1994. Although the Carrier's letter instructed the Claimant to report to work on March 14, the Organization stated that the Claimant called the Carrier some six days later, on March 28, and said that he would return to work on March 30, 1994. The Claimant provided no reason for his failure to report to work on March 14, except that he did not accept delivery of the Carrier's written notice until March 22, 1994.

In recapitulating the key events, we have a Claimant who first assures the Carrier that he would comply with the oral notification of recall, after which he then proceeds to ignore his statement of compliance. He finally receives written confirmation of the oral notification of recall on March 22, some two weeks after the Postal Service first attempted delivery of the Carrier's certified letter. He then waited until March 28, almost one week later, before attempting to contact the Carrier for the first time to advise that he would not show up until March 30, 1994.

The evidence is compelling that the Claimant failed to comply with Rule 9. There is more than adequate support in the on-property Awards which affirm that termination under Rule 9 is self-executing, when an employee, such as the Claimant, fails to comply with the prescribed time limits contained in Rule 9.

Before concluding, it should be noted that the Claimant submitted a one-page statement which consists of his version of the events during March 1994 which was received by the Carrier on February 2, 1996. The Claimant's statement was therefore received after January 23, 1996 when the Claimant filed his Notice of Intent with the Board.

There is no question that the record was closed with the filing of the Notice of Intent. This Board has held that it will not consider evidence submitted after the on-property record is closed. Thus, in Third Division Award 28876, this Board observed:

"It must first be pointed out that this Board is an appellate review Board. Our considerations are limited to those issues, arguments and items of evidence which were developed, advanced or presented during the on-property handling of the claim. We may not consider issues, arguments or evidence which are raised or presented for the first time before this Board.

Our determination is based solely on the record which was developed by the parties during their on-property handling."

Clearly, the Board will not consider the Claimant's statement as evidence or argument, since it was not timely presented as part of the record which was developed on the property. Accordingly, and for the reasons which have been stated, the claim is denied.

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 25th day of March 1998.