

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

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

STATEMENT OF CLAIM:

- 1. The Agreement was violated when the Carrier improperly removed the name of Mr. V. E. Fear from all the 1996 Western Maryland Seniority rosters and thereafter failed and refused to correct same [Carrier's File 12(96-388) WMR].**
- 2. As a consequence of the violation referred to in Part (1) above, Claimant V. E. Fear's name shall be restored to the appropriate seniority rosters to show the Claimant with seniority dates of:**

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.

The Claimant held seniority on various rosters on the Carrier's Western Maryland Seniority District for Trackman, Class A and B Machine Operator, Assistant Foreman and Foreman for dates from 1971 to 1978 as set forth in the claim.

On January 23, 1995, the Claimant was promoted to Assistant Roadmaster, which is a non-covered position.

By letter dated June 16, 1995, the Claimant wrote Division Engineer M. D. Ramsey:

"This letter is to notify you and CSX Transportation that on close of business on June 30, 1995, I Vernon Fear Assistant Roadmaster at Baltimore Md. is turning in my resignation.

Thank you for the opportunity but I am not suited for this position."

By certified letter dated August 23, 1995, with a copy to the Organization, Division Engineer Ramsey wrote the Claimant:

"In accordance with Rule 12 of the BMWWE Agreement - Western Maryland agreement, since you accepted other employment without the approval of General Chairman and employing officer, effective with the date of this letter your name has been removed from all rosters on the Western Maryland Railway."

The August 23, 1995 letter from the Carrier to the Claimant also contained the instruction to other Carrier personnel to "[p]lease remove employee from all appropriate rosters."

On January 11, 1996, the Organization wrote to the Employee Relations Department and asserted that Division Engineer Ramsey incorrectly applied Rule 12 to the Claimant. The Organization asked the Carrier to "intervene in this matter quickly

before the new seniority rosters are posted to insure that Mr. Fear's name is properly listed."

On February 1, 1996, the Director Employee Relations declined the Organization's request, contending that it was untimely.

On February 12, 1996, the Organization protested the Claimant's removal from the 1996 Western Maryland Eastern Seniority District Rosters.

This claim is untimely.

Rule 16 - TIME LIMIT ON CLAIMS reads, in relevant part, as follows:

"(a) All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the Carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based. . . ."

The Rule 16(a) "occurrence" was on August 23, 1995 when Division Engineer Ramsey notified the Claimant that "since you accepted other employment without the approval of General Chairman and employing officer, effective with the date of this letter your name has been removed from all rosters on the Western Maryland Railway." The Claimant therefore had 60 days from that point to file a claim. It was not until January and February 1996 that action was taken to contest that loss of seniority - a time long after the 60 days had run.

The Organization's efforts to characterize the dispute as a seniority roster protest that did not arise until after the seniority rosters were posted in 1996 (thereby making the claim in this matter timely) do not change the result. The Claimant was advised by letter dated August 23, 1995 that he had forfeited his seniority because he accepted outside employment without approval from the Organization and the Carrier. That is when this dispute arose. To accept the Organization's argument would permit the filing of a claim, for example, in March 1996 for an employee who is dismissed in January 1995 and waits until the posting of new seniority lists in January 1996 that do not have that employee's name. In that example, the time limit for filing the claim begins from the point the employee is advised that his employment relationship has been terminated - not over a year later when the new seniority roster is posted without the employee's

name. In that example, the Board could not consider the merits of the employee's untimely claim - no matter how meritorious the merits might be. The same holds for this case.

This is not a situation where an employee saw a posted seniority list and filed a protest over his placement (or lack thereof) on that list. This is a situation where an employee was told in August 1995 that he, in effect, quit and lost his seniority, and then waited far beyond the 60 day time limit for filing claims to protest that severance of employment.

The Board takes no pleasure in resolving this dispute on a procedural basis for an employee with substantial seniority such as the Claimant. However, Rule 16(a) is clear. The Claimant had 60 days from the time he was notified in August 1995 that the Carrier had concluded that he forfeited his seniority to protest that action. The Claimant did not do so within that clearly specified time period. We have no authority to change the language of Rule 16(a). The claim is therefore untimely.

Based on the above, the claim is dismissed.

AWARD

Claim dismissed.

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 14th day of November, 2001.