

Award No. 15678

Docket No. MW-16135

NATIONAL RAILROAD ADJUSTMENT BOARD**THIRD DIVISION****(Supplemental)**

Thomas J. Kenan, Referee

PARTIES TO DISPUTE:**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
MONON RAILROAD**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The cancellation of the seniority rights of the employees named in the "NOTE" hereto was improper and in violation of the Agreement.

(2) The Carrier shall forthwith restore the claimants to the status, with all rights and entitlements they would be enjoying under the provisions of the Agreement had their seniority not been cancelled by the Carrier on February 1, 1965.

NOTE: Claimants are —

M. D. O'Neill	W. F. McPike
M. E. York	L. R. Bledsaw
J. K. Rousey	H. C. Britton
D. L. Kemp	C. R. Brunson
J. C. Gregory	T. C. Bulington
C. C. Johnson	M. C. Duncan
R. S. Bruck	C. D. Ford
R. D. Hopper	J. R. Hardesty
J. E. Sipes	D. L. Hockstra
J. L. Brown	D. K. Kemp
J. H. Fetterhoff	L. L. Reynolds
W. H. Hayes	E. D. Sears
R. Jackson	L. L. Smith
A. W. Little	R. L. Smith
E. L. Wesner	G. A. Tolbert
F. Whitlock	M. H. Smith
J. W. York	C. P. Wiles
C. H. Gould	L. L. Barlow
	F. D. Batchelor

EMPLOYEES' STATEMENT OF FACTS: Prior to February 1, 1965, each of the claimants was laid off by reason of a force reduction. None of the claimants could exercise displacement rights because there were no junior employees whom they could displace.

When the claimants' status changed to that of a furloughed employee, they each filed the prescribed Form 253 with the Carrier.

Each of the claimants received a letter reading:

"Lafayette, Indiana
February 1, 1965

Rule 14 of the Agreement between the Monon Railroad and the Brotherhood of Maintenance of Way Employees stipulates that furloughed employees desiring to retain their seniority must file their names and addresses with the office within 15 days of their furlough date.

This office has no record of your compliance with this rule and, accordingly, your seniority rights have been cancelled.

Yours very truly,

/s/ W. Nuetzel
W. Nuetzel
Chief Engineer

cc: Mr. Frank McCullough"

Claim was timely and properly presented and handled by the Employees at all stages of appeal up to and including the Carrier's highest appellate officer.

The Agreement in effect between the two parties to this dispute dated December 1, 1952, together with supplements, amendments and interpretations thereto is by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS: Claimants herein were all furloughed account reductions in force on dates prior to February 1, 1965. Their seniority was not cancelled by the Carrier on February 1, 1965, as stated by the Organization, but was cancelled on various dates after their individual furlough after they had not filed their name and address within fifteen (15) calendar days from date of being laid off in force reduction or displaced as provided by Rule 14. They were all so notified by a joint letter under date of February 1, 1965.

Carrier complied with the requirements of the rule. Claimants did not. However, Organization now takes the position Carrier's compliance was improper and in violation of the Agreement; also, that Claimants were not covered by the rule.

OPINION OF BOARD: The 37 claimants were all laid off in force reduction. None could exercise displacement rights because there were no junior employees to displace. None filed his name and address with and advised the Carrier, in accordance with Rule 14 of the Agreement, that he desired to retain his seniority rights. All were later advised by the Carrier that they had lost their seniority rights.

The Employees contend that Rule 14 does not require compliance by an employe laid off in force reduction who is unable to exercise displacement rights. They base this contention on the phrase "without displacing a junior employe" which appears in Rule 14(a) as follows:

"RULE 14.

NOTICE OF DESIRE TO RETAIN SENIORITY

(a) When an employe laid off by reason of force reduction or displacement desires to retain his seniority rights, **without displacing a junior employe**, he must, within fifteen (15) calendar days, file his name and address, with the Chief Engineer, and notify him of any subsequent change in address. A standard form will be prepared in triplicate, and a supply furnished all foremen and other employes not under the direct supervision of a foreman, for their use in connection with filing of name and address. The original of the form to be filed with the Chief Engineer, the duplicate to be forwarded to the General Chairman, and the triplicate to be retained by the employes. When forces are increased or unfilled vacancies occur, employe will be notified, and will return to service within ten (10) calendar days thereafter; failure to return to service within ten (10) calendar days, unless prevented by sickness or other unavoidable cause will result in loss of all seniority rights. If he returns to service and has complied with the provisions of this rule, his seniority will be cumulative during the period of his absence." (Emphasis ours.)

The Employees point out that the phrase "without displacing a junior employe" was added to Rule 14(a) when several rules were revised in 1957, and that the purpose of inserting these words was to effectuate the result this Board is now urged to adopt. Rule 14(a), before it was revised, provided as follows:

"(a) When forces are increased, senior employes in the respective ranks, seniority groups and seniority districts, will be given preference in employment. An employe desiring to avail himself of this privilege must, within ten (10) calendar days from date of being laid off in force reduction or displaced, file his name and address in writing with the Director of Personnel with copy to the General Chairman. Such written notice must be given in duplicate and the officer to whom it is addressed will return one copy receipted to the employe. The employe must notify the officer to whom notice is given of any change in address. When forces are increased he will be notified and will return to service within ten (10) days thereafter. Failure to return to service within ten (10) days, unless prevented by sickness or other unavoidable cause, will result in loss of all seniority rights. If the employe returns to the service and has complied with the provisions of this rule, his seniority will be accumulated during the period of his absence."

The Board does not find that the phrase "without displacing a junior employe" was added to the revised Rule 14(a) to exempt persons such as the claimants from the rule's coverage. At the same time the revision of Rule 14(a) was made, Rule 5 (entitled "Seniority Rights") was revised to include the following language:

"Employees who are furloughed and who either cannot or do not exercise their displacement rights and who comply with the provisions of Rule 14, will be recalled to service for new positions or unfilled vacancies on their home section or adjacent sections or on their respective maintenance gang." (Emphasis ours.)

The presence of the language printed in dark type in the revised Rule 5 is inconsistent with the interpretation of Rule 14(a) advanced by the Employees. This Board must interpret the Agreement to give meaning to all its provisions.

The Board holds that Rule 14(a) applies with equal force to all employees laid off in force reduction, whether or not there are junior employees to displace.

Awards similar to and consistent with this award are Award Nos. 4535 (Carter), 5909 (Douglass), and 9457 (Grady).

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of June 1967.