

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21833
Docket Number CL-21915

Herbert L. Marx, Jr., Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(Chicago, Milwaukee, St. Paul and Pacific
(Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
GL-8266, that:

1) Carrier violated the Clerks' Rules Agreement at Chicago, Illinois when it unjustly treated B. M. Matuk by advising him he had forfeited his seniority by failing to file his name and address when furloughed, when in fact he complied with provisions of the Agreement in that respect.

2) Carrier shall now be required to rescind the notice issued to B. Matuk, restore his seniority date, and pay him for all time lost; reparation to be determined by a joint check of Carrier's records.

OPINION OF BOARD: Employee B. M. Matuk, with seniority date of October 22, 1971, was properly furloughed on January 7, 1975, through written notice from J. P. Kalasmiki, Agent, on behalf of the Carrier. Foreman Louis M. Rosenmayer proffered Matuk the form required to record his name and address to insure maintenance of his seniority status for purpose of recall to work. Matuk completed the form and returned it to Rosenmayer. Evidence indicates that this procedure was followed on a number of previous occasions. Rosenmayer's practice was to send such forms to Agent Kalasmiki, the proper Carrier official for such purposes, but by his own admission Rosenmayer failed to do so in this instance.

Subsequently, Matuk was recalled by the Carrier (through Foreman Rosenmayer) for "extra work" (as Rosenmayer described it) in January, February and March, 1975, as a furloughed employee.

By letter of September 2, 1975, Matuk was advised by Agent Kalasmiki that he had "failed to file your name and address after being furloughed on January 7, 1975" and that therefore "you have forfeited all seniority rights in Seniority District 31." Of some interest is that Foreman Rosenmayer retired on June 30, 1975.

Following a hearing and further correspondence, the Carrier advised the Organization, by letter of December 23, 1975, that Matuk had been "rehired effective January 17, 1975, (his current seniority date in District 31)."

The question at issue before the Board is an extremely narrow one: Is Matuk's proper seniority date October 22, 1971, as claimed by the Organization, or January 17, 1975, as claimed by the Carrier?

Carrier relies entirely on the literal wording of Rule 12 which reads in part:

(b) Employees desiring to protect their seniority rights and avail themselves of this rule must, within fifteen (15) days from date actually reduced to the furloughed list, file their name and address, in duplicate, with the proper official (the official authorized to bulletin and award positions) in all seniority districts in which they hold seniority and advise of any change in address within 30 days thereof. Failure of an employee to file his name and address in accordance with this paragraph will cause him to forfeit all seniority rights in the district in which he fails to do so, except in case of sickness or personal injury to himself or an immediate member of his family. The official shall sign and return to the employee as his receipt one copy of the address or change in address so filed.

After having filed his name and address within (15) days from the date actually reduced to the furloughed list, it is not again necessary for an employee to file his name and address following the performance of extra work while he is on the furloughed list, unless there is a change in the address.

Matuk did not file his name and address in person with Agent Kalasmiki. Had the Carrier acted promptly on this failure, Matuk would have lost all seniority and would not have been eligible for extra service from January 22, 1975 -- 15 days after his furlough. Taken by itself and without other circumstances, this would have effectively lost all seniority for Matuk.

This, however, does not take into account what actually happened. First and foremost, Matuk did fill out the necessary form and, as he had done in the past, relied on Foreman Rosenmayer's implied assurance that the

form would be forwarded to Agent Kalasmiki. Indeed, if the form had been so transmitted, Carrier's witness testified that this would have been sufficient. As stated to Agent Kalasmiki (Hearing Question 52 and Answer), "I have accepted signed forms from employees of the Candy House personally through Mr. Bishop and also as tendered by Mr. Rosenmayer as intent of the form is quite clear regardless of who handles it." (Emphasis added)

Further, the evidence is less than clear as to whether Matuk was recalled as a "furloughed" employee in January-March (indicating that the Carrier had constructively accepted him in such status) or was "rehired" on January 17, 1975 and then "inadvertently" left off the seniority lists of July 1975 and January 1976 (Carrier's letter, May 16, 1976). It is reasonable to assume that Matuk believed he was recalled for extra work as a furloughed employee and thus in compliance with Rule 12.

Carrier's letter of September 2, 1975, appears to be a retroactive enforcement of a procedure which had heretofore been waived by the Carrier. The Carrier at its option may require specific compliance with Rule 12, but can hardly penalize employees while it permits one of its representatives (in this case, Foreman Rosenmayer) to encourage use of the Foreman as a conduit for compliance. The insistence of strict adherence to a rule where actions of two parties are involved requires such compliance by all concerned.

The remedy sought by the Organization, as detailed in paragraph "2" of its Statement of Claim, is reasonable under the circumstances and will be applied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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

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That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls

Executive Secretary

Dated at Chicago, Illinois, this 6th day of January 1978.

