

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22136  
Docket Number MS-22057

David P. Twomey, Referee

PARTIES TO DISPUTE: (Anthony L. Caruso  
(  
(Consolidated Rail Corporation  
( (Former Erie Lackawanna Railway Company)

STATEMENT OF CLAIM: This is to serve notice, as required by the rules of the National Railroad Adjustment Board, of my intention to file an ex parte submission on January 29, 1977, covering an adjusted dispute between me and the Con Rail, Successor to Erie Lackawanna Railway Company involving the question:

On January 1st, 1974 my name was omitted from the roster without just cause; the Union started processing my grievance with the company on or about January 17, 1974. The company relied upon Rule 49 as justification. It is my position and contention that said rule was selectively used as a punishment in my particular case; that said rule and other rules were ignored, waived and/or not used or enforced in the Hornell area; that management was actually knowledgeable and aware of my phone number and address; that no written notice was ever sent to me concerning the dropping of my name from the roster; that the act of dropping my name from the roster was arbitrary and capricious of my rights and the denial of due process. It is my position that I am entitled to seniority rights, back pay and employment rights as an assistant signal maintainer with Con Rail, as the successor of the Erie Lackawanna Railroad Company, from January 1st, 1974 to the present and that I have been unjustly denied my rights under Federal and State Law and in addition the contracts between the Erie Lackawanna Railroad Company and the Brotherhood of Railroad Signalmen.

It is my further contention that any reliance upon any rules were ill placed and incorrect, by reason of the custom and practice in the Hornell Area of ignoring the enforcement of said rule or rules.

OPINION OF BOARD: The issue presented in this case involves the Claimant's alleged failure to file his name and address when he was furloughed as an Assistant Signal Maintainer, resulting in the forfeiture of seniority under Rule 49, which reads, inter alia, as follows:

"When employes laid off by reason of force reduction desire to retain their seniority rights, they must file their addresses with the supervisor and with the local chairman within ten (10) days from date of reduction. They must immediately notify both the supervisor and local chairman of any change of address. Failure to comply with these provisions or to return to the service within ten (10) days after being notified by the management of reasonably continuous employment being available will cause forfeiture of all seniority rights unless a leave of absence has been obtained under the provisions of this agreement."

The Carrier contends that Claimant did not file his name and address as required within ten (10) days of furlough and since the rule is self-executing, the Claimant automatically lost his seniority. The record developed on the property supports the Carrier's contention that the Claimant did not file his name and address as required within ten days of furlough.

In Award 20229 (Lieberman), the facts were analogous, and we held:

"Clerk Soddors, who had a seniority date of January 10, 1972, was displaced by a senior employe from his regular assignment effective March 16, 1972. Since Soddors was unable to displace a junior employee, he was furloughed and required to file his name, address and telephone number within ten days with the appropriate Carrier official, as required by Rule 14. He failed to do this and, as provided in Rule 14, he forfeited his seniority on March 26, 1972. \* \* \*"

See Award 20711 (Eischen), 17596 (Gladden), and others supporting this conclusion.

**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 Employes involved in this dispute are respectively Carrier and Employes 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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A.W. Pauls  
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June 1978.