

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22205
Docket Number CL-22243

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(Chicago and North Western Transportation Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8480) that:

1. Carrier violated the current Agreement Rules, particularly Rule 12, when under date of April 12, 1976 it notified Mr. H. C. Roberts, Claim Investigator in the Auditor Freight Rate Claims Department, that he had forfeited his seniority in accordance with the provisions of Rule 12 and 24 (b) account not exercising his seniority within fifteen days from the date he was affected by the loss of his position.

2. Carrier shall be required to reinstate the seniority of Mr. H. C. Roberts, with all rights unimpaired, and compensate him for all time lost from April 12, 1976 forward until such time as the violation is corrected. Such re-imbursement to include losses in connection with all fringe benefits.

OPINION OF BOARD: The Claimant had been removed from his position and had served a suspension from service. The suspension expired as of 12:01 a.m. on March 28, 1976 and, under Rule 12, the Claimant was required to take certain actions to protect his seniority and employe status within fifteen (15) days of a designated date.

It appears that on March 29, 1976, the Claimant had a discussion with a Carrier Official for the purpose of applying seniority, but there is no indication of record that anything was accomplished at that time. In any event, the Claimant appeared before a Carrier Official on April 12, 1976, for the purpose of applying seniority. He was denied that opportunity and on the next day he was notified that the employment relationship had been severed.

No purpose is served by a recitation of the entirety of Rule 12. Suffice it to say that, under certain circumstances, an

employee is required to file his name and address within fifteen (15) calendar days from the date affected and:

"Failure to file such name and address and advice of any change will result in forfeiture of all seniority rights."

The Organization asserts that the Claimant became eligible to apply seniority effective March 28, 1976 and the ultimate issue in this case hinges upon whether the fifteen (15) day time limit provision of Rule 12 commenced as of March 28 or March 29, 1976. If, of course, it started on March 28, then it expired as of the close of business on April 11, 1976, and the Claimant's action was beyond the fifteen-day period. If, on the other hand, March 28, 1976 is not to be counted as one of the calendar days applicable to the fifteen-day limit, then the time limit did not expire until the close of business on April 12, 1976 and the Claimant had taken appropriate action prior to the time that he would have forfeited seniority.

The Claimant has cited Awards of this Board in support of its contention that the first date that a time limit is invoked is not applied as a calendar day but that the day on which the time limit expires is counted as a calendar day.

The Carrier argues that the disciplinary suspension ended on March 27, 1976 and, noting that employees must exercise certain rights within fifteen calendar days from the date affected, the Carrier urges that because the suspension ended on March 27, 1976 and 12:01 a.m. March 28, 1976 was the first time at which he could submit a bid, the fifteen day period ran from March 27. However, of significance to this dispute, at Page 3 of its Ex Parte Submission to this Board, the Carrier concedes that:

"...The first day is not included in computing the fifteen days..."

That concession, plus Carrier's Exhibit "C" disposes of the dispute. In Carrier Exhibit "C", the Manager-Personnel states that the:

"...disciplinary suspension which culminated at 12:01 a.m. on March 28, 1976."

Thus, when one eliminates the first day, it is obvious that the Claimant had until the close of business on April 12, 1976 to take appropriate action; and because he did so, he did not forfeit his seniority.

Of course, the disposition of this dispute is limited solely to the facts of record before the Board, but under those facts, we are obliged to sustain the claim.

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

That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 13th day of October 1978.