

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22930
Docket Number CL-22979

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(The Chesapeake and Ohio Railway Company
((Chesapeake District)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-8801)
that:

Claim No. 1:

- (a) The Carrier violated the Clerical Agreement when they held that Mr. George B. Miller had forfeited seniority.
- (b) The whole matter should be rescinded and Mr. Miller's record be made clear.

Claim No. 2:

- (a) The Carrier violated the Agreement when it failed to provide Mr. G. B. Miller, a fair and impartial hearing on March 6, 1978.
- (b) That Mr. Miller be compensated eight (8) hours at the pro rata rate of that position he would have been entitled starting February 20, 1978 and continuing until he is reinstated.

OPINION OF BOARD: On January 31, 1978, the claimant was regularly assigned to position of clerk, C-92, hours 8:00 A.M. to 5:00 P.M., work week Monday through Friday, at Williamsburg, Virginia. He had a seniority date of June 23, 1969. About 10:15 A.M., January 31, 1978, claimant was advised by a senior employee, G. C. Harman:

"Due to being displaced by senior employee, I will exercise my seniority on Position C-92, Williamsburg, effective 8:00 A.M., February 1, 1978."

By letter dated February 15, 1978, claimant advised the proper Carrier officer:

"Having been displaced on Position No. C-92, Williamsburg, Virginia, effective February 1, 1978, by Senior employee, G. C. Harman, and my seniority does not entitle me to any permanent position, I hereby declare Richmond, Va. my home terminal, and will protect the Extra List under rule 18b."

The question for decision by the Board is posed by the Organization as:

"Did Claimant Miller exercise his seniority rights within the time limits (ten working days) prescribed by Rule 18?"

The Organization contends that Wednesday, February 1, 1978, is not to be counted as one of the ten working days, but Wednesday, February 15, is to be counted, and when claimant filed his letter on February 15, 1978, such letter was timely filed in accordance with the Agreement.

The Carrier's position is that Wednesday, February 1, 1978, is to be counted as one of the ten working days, and, therefore, February 14, 1978, was the tenth working day.

This Board has no quarrel with the reasoning set forth in Third Division Award 10420, quoting Second Division Award 3545, which cited the rule of law to the effect that in computing a specified period of time, the first day is excluded and the last day is included. However, the record in this dispute is clear that the parties hereto have an agreed upon interpretation of Rule 18 that the date actually displaced must count as the first day of the ten working days and, therefore, the general rule as outlined in Award 10420 and Second Division Award 3545 is not applicable on this property.

Under the agreed upon interpretation on this Carrier, claimant was required to either file his name and address in writing with the proper officer, or file a letter with the proper officer stating that he desired temporary work on or before February 14, 1978, which he did not do, and under the provisions of Rule 18(e) he forfeited all seniority rights. The claim will, therefore, be denied.

Incidentally, the record shows that claimant visited the Carrier's office on February 8, 1978, well within the ten working day period, to discuss his vacation, at which time he was reminded that he must sign up as a cut-off employee, but he did not submit the letter until 4:50 P.M., February 15, 1978, one day late under the agreed upon interpretation of Rule 18. Furthermore, the record shows that Carrier did everything within reason to notify claimant of the hearing held on March 6, 1978, which claimant did not attend.

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 30th day of July 1980.