

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22960
Docket Number MW-23100

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(St. Louis-San Francisco Railway Company

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

(1) The Carrier violated the Agreement when it removed G. E. Stites' name from the seniority roster on the Eastern Division and thereby denied him the right to recall (System File B-1829).

(2) Mr. G. E. Stites' name be restored to the Track Department roster on the Eastern Division and he shall be recalled to service and be permitted to bid on bulletined positions."

OPINION OF BOARD: The claimant was employed as a trackman on Carrier's seniority District No. 1. He was laid off by reason of force reduction, effective August 11, 1978.

Rule 78 of the applicable agreement reads:

"Rule 78. Filing Name and Address when Furloughed

"When employees laid off by reason of force reduction desire to retain their seniority rights, they must file their name and address in writing with their immediate supervisor within 7 calendar days of date laid off."

The Carrier contends that claimant failed to file his name and address within the seven-day period specified in the above rule, and, therefore, forfeited his seniority rights. Claimant was notified on September 26, 1978, that as he did not file his name and address until August 25, 1978, he had forfeited his seniority. Claimant contends that he had filed his name and address with the Roadmaster on August 18, 1978.

Upon consideration of the entire record, the Board is convinced that claimant did not file his name and address with his immediate supervisor within seven days from the date laid off in force reduction. In the on-property handling, the Division Engineer advised the General Chairman on October 20, 1978:

"We are not contending that Mr. Stites did not file his name and address, Roadmaster Rainey advises that Mr. Stites did file his name and address and telephone number on 8/25/78, which is approximately 7 days past the prescribed 7 calendar days stated in Rule 78 of the Agreement between the St. Louis-San Francisco Railway Co. and the Brotherhood of Maintenance of Way Employees eff. Aug. 1, 1975.

I find it hard to believe that a man would file his name and address, as Mr. Stites contends on August 18 and go back and file his name and address again, as Mr. Rainey claims and of which we have copy dated received 8/25/78. Mr. Stites contends that he filed both with Roadmaster Rainey on Aug. 18 and Aug. 25 and that he filed with you on Aug. 18. I believe if a man was filing his name and address, he would merely carbon or duplicate a message to Roadmaster Rainey and to you with the same wording.

Mr. Stites contends that he filed with Roadmaster Rainey, in your letter of Oct. 12, you inferred that Mr. Stites told you that he filed with Division Engineer's Office. Mr. Rainey nor my office received copy of the Aug. 18 filing.

Due to all the discrepancies I must respectfully decline your request that Mr. Stites' seniority and service record be restored. Mr. Stites did not fulfill Rule 78 within the prescribed 7 calendar days of the date laid off."

It is our considered opinion that Mr. Stites has not proved that he complied with the provisions of Rule 78 within the time specified therein. We notice that the claimant's note to the General Chairman dated August 18, 1978, did not show any address. The claim will be denied.

As we have decided the dispute on the merits, it is not necessary to pass upon the procedural issue raised.

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;

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

That the Agreement was not violated by the Carrier.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:



Executive Secretary

Dated at Chicago, Illinois, this 28th day of August 1980.