

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24836
Docket Number MW-24835

Paul C. Carter, Referee

PARTIES TO DISPUTE:

(Brotherhood of Maintenance of Way Employees
(
(Consolidated Rail Corporation (former
(Lehigh Valley Railroad Company

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

(1) The Carrier violated the Agreement when it improperly closed the service record of Equipment Operator Richard J. Sweeney (System Docket No. SD LV-209).

(2) Equipment Operator Richard J. Sweeney shall be returned to service with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered.

OPINION OF BOARD: Before discussing the merits of the dispute, we must first dispose of the contention of the Carrier, raised in its submission to the Board, that the claim for monetary damages is barred from consideration under the first paragraph of Rule 5-c of the applicable Agreement, which reads:

"5-c. Grievances or claims shall be made within sixty (60) days from date of the occurrence on which the grievance or claim is based. Decisions by subordinate officers and appeals shall be promptly made."

The Organization responds that no issue with respect to the timeliness of the claim for monetary damages was raised during the handling of the dispute on the property and that such issue is not properly before the Board for consideration.

We have reviewed the correspondence covering the on-property handling and we do not find that such issue was raised by the Carrier prior to the filing of its submission. It is well settled that time limit issues may not properly be raised for the first time before the Board. Therefore, the contention of the Carrier in this respect must be dismissed.

At the time of the occurrence giving rise to the claim, claimant was regularly assigned as a Portable Equipment Operator at Lehigh, Pennsylvania. The record shows that on June 16, 1980, claimant was notified in writing by the Division Engineer:

"Effective with the close of business on June 30, 1980, your position as Port. Equipt. Opr. is hereby abolished in accordance with the current B.M.W.E. Agreement.

Arrange to exercise your seniority rights in accordance with the current agreement of (sic) file force reduction form in accordance with the current agreement."

Claimant performed service through June 25, 1980, and on June 26, 1980, he allegedly called the Track Supervisor's office and marked off sick. On August 14, 1980, claimant was notified in writing by the Division Engineer:

"In accordance with Rule 5(a) of the Agreement between the Brotherhood of Maintenance of Way Employees and the former Lehigh Valley Railroad Company, effective April 15, 1944, you are hereby notified that you are in violation of Rule 2 (h), Paragraphs One and Two, which read as follows:

Filing Address

2(h) When employee is laid off by reason of force reduction and desires to retain their seniority rights, they must file within the (10) days with the officer of the sub-department, notifying them of the reduction, and the General Chairman, their addresses and renew same upon each change of address.

Failing to advise the officer of the sub-department of any change in address or to return to the service within seven (7) days after being so notified by United States Mail, the employee will forfeit all seniority rights.

Our records reveal that the last day you worked was June 25, 1980, as a Portable Equipment Operator and said position was abolished on June 30, 1980, at which time you had ten (10) days to make a displacement and/or file necessary furlough papers, which you have neglected to do.

Therefore, due to the above circumstances, you have forfeited all seniority rights and effective this date, your name will be removed from all seniority rosters. Arrange to return all company material in your possession as previously furnished."

Claimant responded on August 21, 1980, that on June 26, 1980, he had reported off on disability to Carrier's Track Supervisor at White Haven "until further notice because of disabling complications from an auto accident," that he later notified the Supervisor's office in Bethlehem of same and that the latter's office completed an insurance form for him. We note that in the handling of the dispute on the property the Carrier's highest officer of appeals advised the General Chairman on November 4, 1981, in part:

"At our conference we showed you a written statement signed by the Supervisor of Track and two Assistant Supervisors of Track at White Haven stating that no one in the office had received a call from Mr. Sweeney reporting off until further notice because of disability."

The record contains no response to the above-quoted statement.

The Organization contends that claimant, upon recovery from his disability, should have been permitted to return to service on June 30, 1981, under the provision of Rule 3(h)1 reading in part:

"3-h-1. An employe returning to duty after leave of absence, sickness or disability, shall return to his former position if available to him, or may exercise seniority subject to Rule 3-b, to any position bulletined in his absence.

If, during the time an employe is off duty account leave of absence, sickness or disability, his former position is abolished or is permanently filled by a senior employe in the exercise of seniority, he shall exercise seniority subject to the provisions of Rule 3-b."

The Carrier contends that Rule 2-h contains no exceptions and whether claimant was marked off sick or for any other reason on June 26 or June 27, 1980, did not relieve him from his obligation to comply with the provisions of Rule 2-h quoted in the Division Engineer's letter of August 14, 1980.

The Board has carefully studied Rule 2-h, and finds that it contains no exceptions. Claimant was obligated to comply with its terms. His failure to do so warranted the Carrier's action in removing his name from the seniority roster. Under the terms of Rule 2-h the consequence of non-compliance is forfeiture of seniority. See Awards 24055, 24594, 20711, 20371. The Board is not authorized to amend or change an agreement through the guise of an interpretation, but is required to follow the clear language as written.

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 Employees involved in this dispute are respectively Carrier and Employee 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:


Nancy J. Dove, Executive Secretary

Dated at Chicago, Illinois this 8th day of June, 1984