

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25158
Docket Number MS-25295

Paul C. Carter, Referee

(Lloyd R. Knapp
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"1. The Petitioner did not violate Rule 3-D-1, Brotherhood of Maintenance of Way Agreement effective December 16, 1945. He did not have to file a furlough slip under that rule after his job was abolished at the end of tour of duty on June 16, 1981, since he has been on injury disability from June 18, 1981. The respondent was notified by petitioner that he would be off on disability prior to time having run out under Rule 3-D-1. Therefore, the closing of petitioner's service record and removal of petitioner's name from the Allegheny Division Zone A and B 1981 and 1982 seniority rosters was improper.

2. Petitioner's record is to be cleared and his name reinstated to the above seniority rosters and he is to be compensated for wage loss sustained in accordance with the provisions of the agreement."

OPINION OF BOARD: The Petitioner herein is the Claimant. The record shows that he entered Carrier's service as a Trackman on November 10, 1970. On June 10, 1981, Claimant's position was abolished at the close of tour of duty on June 16, 1981.

The Carrier contends that the Statement of Claim presented to the Board by the Claimant enlarges on the claim presented and handled on the property by adding a request that Claimant be compensated for wage loss sustained. The Carrier objects to what it terms a material change in the claim. The record indicates that the claim as presented to Carrier's highest designated officer of appeals by Claimant's Union representatives was a roster protest on account of the removal of Claimant's name from the 1982 seniority roster and did not contain any monetary claim. The only claim referable to this Board under the Railway Labor Act is the claim handled in the usual manner on the property up to and including the Carrier's highest designated officer of appeals. The monetary portion of the claim before the Board will, therefore, be dismissed.

Rule 3-D-1 of the applicable Collective Bargaining Agreement provides:

"3-D-1. Reduction in Force--Retaining rank on roster.

(a) (Effective 6-1-58.) When force is reduced, employees affected shall have the right, within ten (10) days after the effective date of such reduction, to elect to take furlough or to exercise seniority to displace junior employees in accordance with the following provisions of this rule.

"(b) An employe laid off as the result of reduction of force, desiring to retain his seniority, must, within ten days from the date laid off, file his name and address, in writing, with the Supervisor of Structures, Supervisor of Track, or other corresponding officer, under whom last employed. The employe will prepare three copies of such notice, retaining one copy and filing two copies with the officer referred to. One copy of such notice will be forwarded by the Management to the District Chairman.

The requirement for filing name and address will not apply to an employe who exercises seniority in reduction of force to another position covered by this Agreement.

* * *

(d) An employe who fails to comply with the provisions of paragraph (b) and (c) of this rule will forfeit his seniority and his name will be removed from the seniority roster."

On June 30, 1981, Carrier's Division Engineer advised Claimant that he had forfeited his seniority under the above-quoted Rule 3-D-1 and Claimant's name was removed from the 1982 seniority roster dated February 1, 1982.

The Claimant contends before the Board, and similar contention was made by his Union representative in the handling of the dispute on the property, that he told the Supervisor of Track at Warren, Pennsylvania, on June 10 and again on June 11, 1981, that he was going to take sick leave effective June 17, 1981, because of trouble with his left knee. In the handling of the dispute on the property the Carrier furnished to Claimant's representative affidavit from the Division Engineer and Head Clerk dated April 8, 1982:

"April 8, 1982.

This is to certify that at no time during the month of June, 1981 was I or any employes in my jurisdiction notified by Mr. L. R. Knapp that he would be off on disability.

(Sgd) John Palloni
J. Palloni
Division Engineer.

(Sgd) D. K. Forsburg
D. K. Forsburg
Head Clerk

Sworn and subscribed before
me this 21st day of April, 1982

(Sgd) Joanne M. Matty
Notary Public."

and sworn statement from the Track Supervisor at Williamsport, Pa.:

"Mr. J. Palloni
Division Engineer
P.O. Box 3484
Williamsport, Pa. 17701

Mr. G. W. Bigelow
P.O. Box 826
Warren, Pa. 16365

Dear Mr. Palloni:

This is to certify that at no time during the month of June 1981 was I or any employees in my jurisdiction notified by Mr. L. R. Knapp that he would be off on disability.

Sincerely
(Sgd) G. W. Bigelow
Track Supervisor

Sworn and subscribed before
me this 8th day of April, 1982.
(Sgd) Marilyn S. Mitchell."

The above sworn statements were not responded to by the Claimant or his representatives.

This Board acts as an appellant tribunal, and it is well settled that issues and defenses not raised in the handling of the dispute on the property may not properly be raised for the first time before this Board. There was no contention in the handling of the dispute on the property that Rule 5-Discipline was applicable.

The fact that Claimant did not file his name and address with the Supervisor of Track within ten days of notice of abolishment of his position is not disputed. The provisions of Rule 3-D-1 are clear, mandatory and contain no exceptions. Claimant was obligated to comply with its terms. The rule is self-executing and the consequence of non-compliance is forfeiture of seniority. There is no necessity, under such circumstances, for handling under any other rule, such as Rule 5. The Carrier acted in accordance with Rule 3-D-1 in removing Claimant's name from the seniority roster.

Part 1 of the claim will be denied, as well as the request that Claimant's record be cleared and his name reinstated to the seniority roster. The monetary portion of the claim will be dismissed.

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

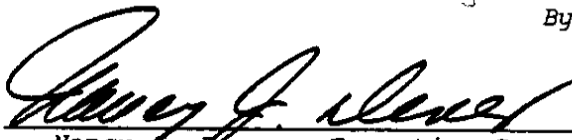
That the Agreement was not violated.

A W A R D

Claim denied in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Lever - Executive Secretary

Dated at Chicago, Illinois this 30th day of November 1984.

