

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25227
Docket Number MS-25442

James Robert Cox, Referee

(R. Wayne Hester

PARTIES TO DISPUTE: (
(Union Pacific Railroad

STATEMENT OF CLAIM:

Petitioner claims that, by design, employees of the Union Pacific Railroad Company sought to have the petitioner terminated from his job and abolished from the seniority roster (sic) despite his many years of service for the Union Pacific Railroad Company. Petitioner requests that he be reassigned to his proper position on the seniority Roster (sic) and that he receive all back pay and other benefits due to him due to the unlawful actions of the Company and its employees.

OPINION OF BOARD: In October 1981 Claimant Wayne Hester, received Notice that he was to be furloughed from his job as a Painter with the Carrier. The layoff Notice to the gang in which Hester worked clearly specified that loss of seniority would be a consequence of failure to comply with Rule 21 (f). Rule 21 (f) of the Schedule Agreement provides that furloughed employees retain their seniority provided they file their addresses in writing within ten calendar days after being displaced and that failure to follow the filing requirements will result in forfeiture of all seniority.

Claimant concedes that he did not write a recall letter, expecting that the B & B Clerk would prepare the letter for him to sign. Furthermore, there is no evidence that Hester made any effort to sign or submit a recall letter subsequent to his layoff.

Claimant's name and seniority date were deleted from the seniority roster January 1, 1982. It was not until May 1982, that Hester contacted the Organization regarding the loss of seniority.

The Carrier acted properly within the proscription of the Rule in terminating the Claimant's seniority.

Claimant contends that his failure to file resulted from a conspiracy participated in by the B&B Clerk who prevented Hester from filing the recall letter by sending him out on a painting job while the other employees were completing their letters. A fellow employee, signing his recall notice, asked the Clerk where Hester was. The Clerk responded, "don't worry about Wayne, we'll take care of him."

In September, 1981, the same B&B Clerk told another employee that he had been trying to get rid of Hester for years and was going to do it before he retired, complaining about Hester's failure to perform certain work including climbing towers.

Upon this evidence, the Board fails to find a conspiracy or effort to prevent Hester from filing the recall letter. The evidence only indicates management dissatisfaction with Claimant's work performance. The term "take care of" did not necessarily have a negative connotation in the circumstance in which it was uttered.

The recall letters of Hester's gang were handwritten, not made out by the B&B Clerk. Evidence indicates that Claimant had signed his own recall notices in October, 1977, and October, 1979.

Claimant violated Rule 21 (f). Consequently, his claim is denied.

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 Employee 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

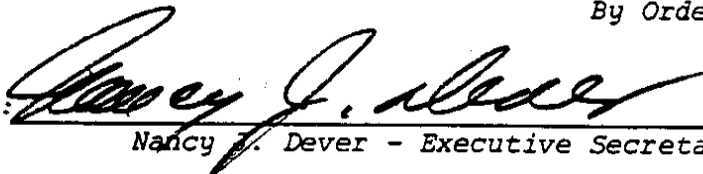
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 31st day of January 1985.