

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25517  
Docket Number MS-25499

Paul C. Carter, Referee

(Jerry R. Lusher, Jr.

PARTIES TO DISPUTE:

(  
(The Chesapeake and Ohio Railway Company  
(Southern Region)

STATEMENT OF CLAIM:

Petitioner seeks reinstatement of lost seniority rights and any other corrective measures deemed equitable by the Board until he is returned to service with all rights and privileges restored.

OPINION OF BOARD: The Claimant (Petitioner herein) was formerly employed by the Carrier as a B&B Mechanic, assigned to B&B Gang No. 1409, headquartered at Sciotoville, Ohio. On October 26, 1982, Carrier issued Bulletin NO. RU-37 notifying all concerned of the abolishment of B&B Force No. 1409, effective at the end of tour of duty on November 4, 1982. The Carrier contends that on the same date the Supervisor verbally notified B&B Force No. 1409, including the Claimant, of the action, and, additionally, on October 28, 1982, the Supervisor read the contents of the bulletin to the Employees of that gang, and the bulletin was posted on camp cars. When B&B Force No. 1409 was abolished on November 4, 1982, Claimant herein was furloughed.

Rule 5 of the applicable Agreement reads in pertinent part:

"When employees displaced or laid off by reason of force reductions do not stand to work in any class or desire to retain seniority, they must file their name and address in writing not later than ten days from date they are cut off. This notice must be sent in duplicate to the Manager-Engineering or other corresponding supervisory officer who will return one copy receipted to the employee."

On December 3, 1982, Claimant was notified by the Carrier's Manager-Engineering:

"You were furloughed on November 5, 1982, and you failed to comply with Rule 5 in violation of the rules of the Maintenance of Way Agreement, thereby forfeiting your seniority rights.

"Therefore, your name has been removed from the Russell Division Seniority Roster."

We find from the record that proper notice was given by the Carrier of the abolishment of B&B Force No. 1409. Rule 5 of the Agreement required affirmative action by the Claimant, if he desired to retain his seniority. "...they must file their name and address in writing not later than ten days from the date they are cut off. This notice must be sent to the Manager-Engineering or other corresponding supervisory officer who will return one copy receipted to the employee." The rule contains no exceptions, and the Board can only apply the Agreement as written. Rule 5 is self-executing.

We agree with the Carrier that Employees are charged with knowledge of rules of the applicable Agreement.

There is no evidence in the record that Claimant actually filed his name and address with the Carrier within ten days from the date cut off, as specifically required by Rule 5.

On the basis of the record before us, the claim must be 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 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:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of June 1985.

