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NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26059
Docket Number MW-26217

John W. Gaines, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(The Chesapeake and Ohio Railway Company
((Southern Region)

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

(1) The Carrier violated the Agreement when it removed the name of Mr. B. M. Stepp from all seniority rosters within a letter dated December 9, 1983 (System File C-M-2062/MG-4409).

(2) The December 9, 1983 letter addressed to Mr. Stepp shall be rescinded, Mr. Stepp shall have his seniority restored with the seniority dates he held prior to the violation referred to in Part (1) hereof and he shall be compensated for all wage loss suffered as a consequence of said violation".

OPINION OF BOARD: The Claim in this dispute must turn on the resolution of the question whether Claimant filed notice with Carrier for protection of his seniority within the specified time. Claimant was cut off with Carrier's general reduction in force. Carrier asserts Claimant has forfeited his seniority.

Rule 5 is entitled. "PROTECTION OF SENIORITY WHEN CUT OFF AND RECALLING TO SERVICE". Paragraph 5(a) specifies that the employee must, within ten days from date of cut off, file his name and address by notice in duplicate with the Manager-Engineering or other corresponding supervisory officer who will return one copy receipted to the employee.

Claimant fails to show that he complied with Paragraph 5(a) of the Rule, nor does he show a copy of the receipted notice.

The burden of filing the notice and showing that it was filed is on Claimant. Carrier denies receipt. The burden has not been sustained. We will deny the Claim.

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. Dyer - Executive Secretary

Dated at Chicago, Illinois this 8th day of July 1986.

