

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26100
Docket Number MW-26214

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. L. O. Byrd from all seniority rosters within a letter dated December 9, 1983 (System File C-M-2057/MG-4365).

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 Byrd shall be rescinded, Mr.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

OPINION OF BOARD: This dispute turns on whether Claimant properly filed notice with the Carrier to protect his seniority at the time of his furlough. Carrier's position is Claimant has forfeited his seniority.

Rule 5(a) requires that employees protecting their seniority must file a notice with the Manager-Engineering of their name and address "in writing not later than ten days from date they are cut off."

The incontrovertible evidence is that Claimant failed to timely file his name and address with the Manager-Engineering following cut off.

Claimant explains that the time period lapsed on him while he was seeking a Company form to submit and there was no supply of the Company forms available. The Organization asserts Claimant was finally able to obtain the proper form from Carrier and then filed his notice, but outside the ten days as specified by Rule.

There is no provision of the Agreement specifying the form of written notice for the employee to use in filing his name and address, but the ten day limitation within which to do so is specifically set out.

The Claimant has not met his burden of proof to show that his Claim should be sustained because of a proven breach of an existing Rule or provision and, therefore, it must necessarily fail.

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. Bever - Executive Secretary

Dated at Chicago, Illinois, this 22nd day of August 1986.

