

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26156
Docket Number MS-26485

Edwin H. Benn, Referee

PARTIES TO DISPUTE: (Donald R. Riedeman, Individual
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(Burlington Northern Railroad Company

STATEMENT OF CLAIM:

"1. The September 1, 1982 BMW-BN Agreement was violated when Burlington Northern Railroad failed to allow Sectionman Donald R. Riedeman to take service on a position to which he had been recalled at Aberdeen, S.D.

2. The name of Donald R. Riedeman be restored to Seniority District 11 Roster 1 Rank and C (Sectionman) Roster of the Track Department of Burlington Northern Railroad; That Donald R. Riedeman be compensated for all wage loss as the result of the improper removal of his name from the seniority roster, and Donald R. Riedeman be immediately restored to the service of Burlington Northern Railroad in accordance with his seniority."

OPINION OF BOARD: Claimant worked as a Section Laborer on the Carrier's Minnesota Division, Seniority District No. 11. Claimant was furloughed on December 2, 1983. In accord with Rule 9 of the Controlling Agreement, on December 7, 1983, Claimant filled out Form 15364 in order to retain his seniority. The Carrier acknowledged receipt of the form on December 8, 1983.

On March 30, 1984, Maintenance of Way Clerk M. W. Guillaume called Claimant and advised him that he was being recalled from furlough and was to report to service on Monday, April 9, 1984, at Aberdeen, South Dakota at 7:00 A.M. for backtrack gang. Claimant told Guillaume that he would report as directed. Guillaume told Claimant that a Certified Letter would be mailed that day to confirm the recall from furlough. A Certified Letter was sent on March 30, 1984, to the address given by Claimant on Form 15364 informing Claimant of the terms of the recall. The letter was received at Claimant's residence on April 3, 1984, and was signed for by Susan Riedeman.

On April 17, 1984, Claimant reported for work. The Carrier did not permit Claimant to begin work on that date. On April 26, 1984, Carrier sent Claimant a letter advising him that his personal record had been closed out in accordance with Rule 9 of the Agreement since he failed to report to work within ten days of the recall.

The instant Claim was filed by letter dated August 20, 1984.

Rule 9 states:

"When an employe laid off by reason of force reduction desires to retain his seniority rights, he must within ten (10) calendar days of date so affected, file his name and address in writing on the form supplied for that purpose, with his foreman or supervisor with copy to General Chairman, receipt of which will be acknowledged by the Company. He must advise in writing of any subsequent change of address, receipt of which will be similarly acknowledged. When new positions of more than thirty (30) calendar days' duration occur, employes who have complied with this rule will be called back to service in the order of their seniority. Failure to file his name and address or failure to return to service within ten (10) calendar days, unless prevented by sickness, or unless satisfactory reason is given for not doing so, will result in loss of all seniority rights. If he returns to service and has complied with the provisions of this rule, his seniority will be cumulative during the period of absence. This rule does not apply to employes who have been out of service twenty-four months or more, unless they had no opportunity to work on their seniority district during this period."

Based upon our close examination of the record, we are satisfied that substantial evidence exists in this record for us to find that the discharge was proper within the requirements of Rule 9. Rule 9 specifically requires that Claimant "return to service within ten (10) calendar days...." Claimant had knowledge of the April 9, 1984, recall on March 30, 1984 and written confirmation to that effect was received at his residence on April 3, 1984. Yet, Claimant did not report for work until April 17, 1984, - well after the ten day period had expired. Under the express provisions of Rule 9, Claimant therefore forfeited his seniority. There is no evidence in the record to support an assertion that a "satisfactory reason" existed for Claimant's not reporting to work within ten days to justify a different result. Further, the March 30, 1984 recall letter was sent to the same address Claimant left with the Carrier for the purposes of receiving recall notice. We are satisfied that the Carrier took sufficient steps under the requirements of Rule 9 to give proper Notice of the recall. See Public Law Board No. 2877, Award No. 59.

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 Employes involved in this dispute are respectively Carrier and Employes 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

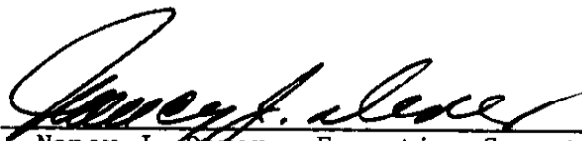
That the Agreement was not violated.

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 29th day of September 1986.