

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

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

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

(1) The Agreement was violated when the Carrier terminated the seniority of B. W. Blackwood and removed his name from the Trackman's roster and Machine Operator's roster (System File C-M-2820/MG-5132).

(2) Claimant B. W. Blackwood's seniority as trackman dating from July 28, 1978 and as machine operator dating from March 26, 1982 shall be restored and listed on appropriate roster."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimant had a seniority date of March 26, 1982, as a Roadway Machine Operator and a seniority date of July 28, 1978, as a Trackman on the Carrier's Northern Region. As a result of a force reduction, Claimant was furloughed on October 26, 1984. Claimant asserts that his cut-off notice required under Rules 5 and 13 was mailed on October 29, 1984. However, the Carrier did not receive the notice until November 16, 1984, and the envelope containing the notice showed a postmark of November 14, 1984. On February 8, 1985, Claimant was notified that he had been omitted from the 1985, seniority rosters.

By letter of June 13, 1985, which was signed by the Organization on June 17, 1985, the Carrier agreed, without prejudice to its position in this case, to place Claimant's name at the bottom of the Trackman and Machine Operator rosters with a seniority date of June 6, 1985. The Agreement further provided that the Organization could further process the instant Claim for Claimant's original seniority.

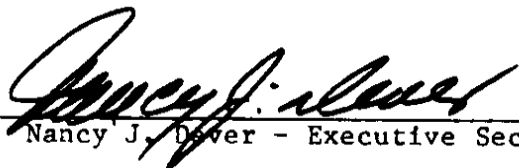
Rule 5(a) requires that displacement rights must be "exercised within ten (10) calendar days from the date the employee is cut off." Rule 13(a) requires that in order to retain seniority rights without displacing junior employees, an employee "must within fifteen (15) calendar days file their name and address through the foreman in writing with the Manager Engineering...." Although the cut off notice was dated October 27, 1984, and notwithstanding Claimant's assertions to the contrary, the evidence as demonstrated by the postmarked envelope and the date of receipt of the notice by the Carrier's Manager Engineering sufficiently establishes that Claimant's notification was not submitted in a timely fashion as required by Rules 5 and 13. Third Division Awards 26173, 26100, 26099, 26059. The Claim must therefore be denied.

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 17th day of March 1988.