

The Third Division consisted of the regular members and in addition Referee John E. Cloney when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(The Atchison, Topeka and Santa Fe Railway Company

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

(1) The Carrier violated the Agreement when it improperly closed the service records of Trackmen H. Nez, T. J. Kee, L. D. Johnson, J. L. Kaye, E. Jones, P. Charlie, Jr. and E. Charlie, Jr. (System File 170-2-861/11-960-60-41).

(2) The claimants shall be reinstated with seniority and all other rights unimpaired."

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.

On December 13, 1985, the Claimants were laid off in a reduction in force of Trackmen on the Albuquerque Division.

Rule 2(c) reads in pertinent part:

"Employee(s) laid off in force reduction shall retain their seniority provided they (1) file their address in writing within fifteen (15) calendar days after being displaced; and (2) promptly report in writing any subsequent changes in their address. The reporting required herein must be addressed to the officers designated below:

Employees holding seniority in Groups
1, 2, 3, 4, 5, 6, 7, 9 and 12 with
the Division Engineer.

*** Failure to meet any of the requirements as above specified, failure to report on the date indicated in the notification of recall, not to exceed fifteen (15) calendar days from date of notification of recall forwarded to the employee's last known address, without a satisfactory reason, will result in forfeiture of seniority in the class where recalled. When an employee forfeits seniority under this provision, he will be notified thereof, in writing, with copy to the General Chairman."

The Organization contends that before establishing seniority on the Albuquerque Division all Claimants had worked on Carrier's System Rail Laying Gangs. According to the Organization, the practice on System Rail Laying Gangs was that timekeepers would automatically file names and addresses of laid off employees, thus relieving the individuals of compliance with Rule 2(c). Apparently assuming the same situation prevailed on the Albuquerque Division, Claimants did not individually comply with Rule 2(c). On January 28, 1986, each Claimant was notified:

"Effective January 1, 1986 you were removed from the Seniority Roster of the Albuquerque Division account failure to provide recall address as stipulated in Rule 3, Section C"

Carrier did not send copies of these letters to the General Chairman but, by January 30, 1986, the date of the Claim, he had been furnished copies by at least some of the Claimants. Shortly thereafter, personnel in the General Chairman's office informed personnel in the Division Engineer's office that the Organization had received copies of the letters.

The Claim was moved to this Board by the Organization's Notice of Intent dated April 23, 1987. By letter dated February 25, 1987, the Organization for the first time raised the argument that System Rail Laying procedures differed and were relied upon by Claimants. Carrier denies having received this letter or its many attachments and no proof of its receipt was submitted.

On March 17, 1987, the Organization wrote the Carrier as follows:

"With reference to claim, File 17-2-861 please find attached letter dated March 2, 1987 from former Assistant Foreman and Timekeeper of System Rail Gang Mike White, which sustains our position of our previous correspondence."

The attached letter read:

"3-2-87

Both Asst. Timekeepers on Steel Gangs filled out
change of address for all employees.

This has been always practice on the gang.

Mike White"

On April 16, 1987, Carrier responded that Claimants were not employed on the System Steel Gangs when they were force reduced and thus the White statement did not bear on the dispute. On April 30, 1987, the Organization responded with identifying information regarding White. In our consideration of this claim, we must disregard any materials submitted on the property after April 23, 1987, the date of its removal to this Board.

The Organization agrees Rule 2(c) is clear but believes Claimants reliance on System Gang practices must be considered in mitigation.

We agree with Carrier that Rule 2(c) is clear and self-executing. It is equally clear the employee and the General Chairman are to be notified in writing of the forfeiture of seniority. What the consequence of a failure to notify the General Chairman might be in any given situation is not as clear (i.e. Is there a reversion back so as to upset the forfeiture of seniority, etc?) but we are not really faced with that problem. The Organization admittedly had notice, and copies of the letters, at least through the employees, by January 30, 1986, two days after the letters issued.

We agree with the Organization that application of even a self-executing rule can be stayed by this Board in appropriate circumstances.

The record here, however, does not show that a practice upon which Claimants could reasonably rely had been established in handling on the property. That issue was first raised in the February 25, 1987 letter, which was more than one year after the claim was filed. Carrier denies having received that letter and no proof of its delivery has been offered. Thus, the March 17, 1987 letter from the Organization and the attached statement of White constitute the only material furnished on the property in support of a reliance theory. From this we cannot conclude a practice upon which Claimants could reasonably rely was established to mitigate failure to comply with Rule 2(c).

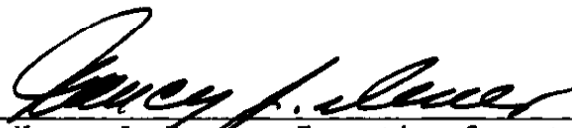
A W A R D

Claim denied.

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Award No. 28026
Docket No. MW-27821
89-3-87-3-327

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 10th day of August 1989.