

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29756
Docket No. MS-29588
93-3-90-3-566

The Third Division consisted of the regular members and in addition Referee Dana Edward Eischen when award was rendered.

PARTIES TO DISPUTE: (Lyle C. Pugh
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(Burlington Northern Railroad

STATEMENT OF CLAIM:

"Whether Burlington Northern improperly terminated my August 18, 1978 foreman's seniority date under Rule 9 of the Agreement between Burlington Northern and the Brotherhood of Maintenance of Way employees."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

This Claim alleges violations of various provisions of the Maintenance of Way Agreement, when Carrier removed Claimant from the District 11 Foreman seniority roster.

On January 9, 1989, Claimant went into furlough status resulting from abolition of positions and/or reduction in forces. The Claimant's last day of service was January 3, 1989. Prior to furlough, his position was that of Foreman of the Maintenance Crew, headquartered at St. Cloud, Minnesota. Claimant had the following seniority dates to protect on Twin Cities Seniority District No. 11, the seniority District on which the disputed forfeiture of seniority occurred:

"TRACK SUB-DEPARTMENT

Foreman/Track Inspector	8/18/78
Assistant Foreman	11/12/76
Sectionman	4/22/69

ROADWAY EQUIPMENT SUB-DEPARTMENT

Gp3 Machine Operator	5/2/69"
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At the time of his furlough, Claimant indicated on his requisite Rule 9 form that, if recalled to the Track Sub-department sectionman, he wanted his recall limited to his Home Roadmaster Sub-district.

On January 17, 1989, Claimant was recalled from furlough status to a position as Sectionman on the St. Cloud Maintenance Crew. Claimant did not bid on the position which was ultimately filled by another employee. At that time, Claimant did not revert to furlough status by filing another Rule 9 form, but next worked a Sectionman position at Elk River, Minnesota. This position was also subject to bulletin assignment. Claimant again failed to bid for the vacancy he was working, and this position was also assigned to another employee.

Subsequently, the Claimant moved to another bulletined position, that of Sectionman at Little Falls, Minnesota. Like the aforementioned positions, this job was bulletined due to the incumbent's retirement, and was awarded to an alternate when the Claimant failed to bid on it. Claimant then went to the position of Sectionman working with a Boom Truck, headquartered at St. Cloud, Minnesota. Claimant did not bid on that position. However, Claimant did bid on and was assigned the position of Gp3 Machine Operator on a traveling crew scheduled to begin working on April 1, 1989.

On February 24, 1989, while working a Sectionman position on his Roadmaster Home Sub-district, a higher ranked position was advertised for bid. That position, 17046 Relief Track Inspector headquartered at Garretson, South Dakota, is located on Seniority District 11, the same district on which Claimant was working the lower ranked Sectionman positions. Although Claimant Pugh could not be recalled from furlough to fill the Relief Track Inspector position, he was required to bid on the position in order to protect his Foreman/Track Inspector seniority date. Again, Claimant did not bid on the position, and on March 11, 1989, the position was awarded to an employee junior to the Claimant. As

senior employee, had the Claimant bid to the position of Relief Track Inspector, it would have been assigned. However, he did not, and because of his failure to do so, Carrier removed Claimant's District 11 Foreman/Track Inspector seniority date from the Seniority Roster in accordance with Rule 8(g) of the Agreement.

In July 1989, several months after the Carrier had removed the Claimant's Foreman/Track Inspector seniority date, Claimant bid to a Foreman position on the Maintenance Crew headquartered at St. Cloud, Minnesota. Carrier did not assign the Claimant to the position because his seniority date had been forfeited. Claimant contacted the Organization to find out why he had not been assigned to the foreman position, and was informed that his seniority date had been forfeited because he had failed to apply (bid) for the Track Inspector position in March, 1989.

Approximately six (6) months after the Carrier's removal of his seniority date, the Claimant, on his own behalf, filed a grievance with the Division General Manager alleging that the Carrier had "wrongfully deprived" him of his seniority date. Further, Claimant maintained that he was not aware of the removal of his Foreman's seniority "until on or about August 11, 1989," the time he discovered he was not assigned to the Foreman's position he had bid on. Additionally, Claimant asserted that "the seniority rosters had not been properly posted" or he would have been aware of his seniority status.

The General Manager disputed that the Claimant was unaware of his status, reminding Claimant that he had discussed his situation with a Clerk of the Maintenance of Way Administrative Office in March 1989, at which time the Clerk advised him of his forfeiture. The General Manager also disputed Claimant's allegation that seniority rosters had not been properly posted and advised that "even at this time (November 1989), rosters were still hanging in the Roadmaster's office in St. Cloud." Finally, the General Manager stated that if the Claimant had any question or confusion pertaining to the Agreement rules in question, "you should have contacted someone who deals on a full-time basis to determine if your interpretation of the rules was correct."

In the final analysis, Claimant erred fatally when he failed to file or appeal his claim in timely fashion. Perhaps he might have avoided that mistake if he had consulted or sought assistance from his duly authorized representative. However, his improper handling of his own claim requires this Board to dismiss it for lack of authority and jurisdiction under Rule 42, Time Limit on Claims.

Form 1
Page 4

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A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 20th day of September 1993.