

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30427
Docket No. SG-30794
94-3-92-3-594

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(CSX Transportation, Inc. (former Chesapeake
(and Ohio Railway Company)

STATEMENT OF CLAIM: "Claim of the General Committee of the
Brotherhood of Railroad Signalmen on behalf of
D. F. O'Brien that:

- a) Carrier violated the parties' schedule agreement, as amended, particularly Rule 42(a) when in a letter dated May 7, 1991, Division Engineer Zenisek informed Claimant O'Brien to the effect that his name had been removed from the Hocking District Seniority Roster pursuant to "Rule 42(d)."
- b) Carrier now be required to rescind this letter dated May 7, 1991, addressed to Claimant D. F. O'Brien, thereby restoring his seniority and 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 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.

In the spring of 1991, Claimant was furloughed from Carrier's Hocking District Seniority Roster, and moved to another seniority district. On April 15, 1991, two permanent positions of Signalmen to be headquartered at Fostoria, Ohio, were advertised on the Claimant's home district. Copies of the bulletins were sent to Claimant's home address. Claimant did not respond to the bulletins and, in a letter dated May 7, 1991, was informed that he had been removed from the Hocking District Seniority Roster for his failure to bid on the positions sent to him.

Both Claimant and his General Chairman protested Carrier's action. Specifically, Claimant wrote a letter to Carrier on May 22, 1991, that he had not intended to forfeit his seniority in the Hocking District, and had declined to bid because he was accustomed to receiving "return to service" orders by Registered Letter or by telephone. Further he maintained that he had never been required to bid a job while laid off. Carrier denied the claim and it was subsequently processed in the normal manner. During the course of processing, Carrier offered to reinstate Claimant's seniority in his home district "without prejudice." For reasons that are unclear on this record, the Organization rejected what it viewed as a "conditional" offer of settlement. The claim was subsequently processed up to and including the highest Carrier officer responsible for handling such matters.

Through extensive, unrefuted evidence, the Organization demonstrated persuasively that it was Carrier's custom over a long period of time to notify employees by Registered Letter or by telephone of their obligation to return to service. Moreover, Carrier has not refuted the Organization's assertion that employees were not required to bid on all positions for which they were eligible while on furlough. Accordingly, the Board does not find that Claimant forfeited his seniority in failing to bid on the two bulletined positions sent to him.

With respect to the Organization's rejection of Carrier's offer to reinstate Claimant's seniority in his home district, it is apparent from the correspondence between the Parties that the Organization misunderstood the offer as "conditional" and that Carrier did nothing to ameliorate that obvious misunderstanding. Under the circumstances, Claimant should not bear the consequences of the confusion surrounding the processing of his claim. Thus the claim with respect to restoration of Claimant's seniority rights on the Hocking District Seniority Roster is sustained.

AWARD

Claim sustained in accordance with the Findings.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 8th day of August 1994.