

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31128
Docket No. MS-30755
95-3-92-3-518

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

PARTIES TO DISPUTE: (Robert D. Severs
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(Illinois Central Railroad

STATEMENT OF CLAIM:

"This is to serve notice, as required by the rules of the National Railroad Adjustment Board, of my intention to file an Ex Parte Submission within 30 days covering an unadjusted dispute between me and the Illinois Central Railroad, involving the questions:

- 1) Why was my seniority terminated on Jan. 7, 1992; since I was paid on Feb. 8, 1989 for a job that was contracted out.
- 2) Why was I not informed the above job was open so I could have and would have worked on Feb. 8, 1989?"

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.

It is not disputed that Claimant was furloughed in a force reduction on January 6, 1989, that he declined opportunities to cover short term vacancies, and did not perform any compensated service for Carrier after January 6, 1989. Claimant did receive a monetary award for an alleged subcontracting violation by Carrier on February 8, 1989.

On January 7, 1992 Claimant was advised by the Engineering Superintendent that, by operation of Rule 10(c) of the Schedule of Wages and Rules, his seniority with Carrier had been terminated. Claimant wrote to the Carrier's highest designated appeals officer, the Director Labor Relations, appealing the termination of his seniority. Claimant maintained that his seniority should not have been terminated on January 7, 1992 because he was paid on February 8, 1989 "... for a job that was contracted out."

The Director Labor Relations denied the claim, pointing out that although Claimant was indeed compensated on February 8, 1989, it was due to Carrier's admitted failure to observe the 60 day time limit, and not due to the merits of the claim which the Organization had presented on his behalf. As a result of that denial, Claimant appealed his claim directly to the Board for resolution.

Carrier maintains that the claim should be dismissed because Claimant "... did not comply with the mandates of the Railway Labor Act when he failed to progress the claim on the property in the manner prescribed by Section 2, First, Second and Sixth of the Act, nor was the requirement of a conference waived by Carrier.

With respect to the merits of the issue, Carrier asserted that the time claim was paid because Carrier did not respond to the initial claim within 60 days, and payment of a time claim "... did not constitute service rendered and would not end in a period layoff." Finally, Carrier asserted that there are "several" people with less seniority than Claimant who are currently working, and had Claimant bid on the jobs he would have been "able to work rather than be furloughed for three (3) years", thus losing his seniority.

Assuming, arguendo, that the claim should not be dismissed for lack of proper handling on the property, it must be denied for lack of merit. Rule 10(c) of the Agreement clearly and unambiguously sets forth the parameters regarding force reduction layoffs and loss of seniority. Claimant did not work during the three-year period following his furlough. Recovery of money damages for a violation of the time limits on claim handling in February 1989 did not constitute a tolling of his force reduction layoff status. Claimant remained on furlough and declined viable opportunities to perform service at his own peril. The provisions of Rule 10 (c) are self-enforcing and Carrier did not violate the Agreement when it notified Claimant that his seniority had been lost under that Rule.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 26th day of September 1995.