

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36987
Docket No. MS-37144
04-3-02-3-65

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

(Billy J. McKellar

PARTIES TO DISPUTE: (

(Union Pacific Railroad Company

STATEMENT OF CLAIM:

"In my absence from duty, I received two recall letters from the Union Pacific Railroad Track Department. From the date of the letters, I was allowed seven days to respond to the written notifications. The recall notifications stated that failure to respond would result in the loss of my seniority. I would like to remedy the situation by being allowed to return to the Union Pacific Railroad at all lower classifications than that of the classification of recall."

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 were given due notice of hearing thereon.

During all times pertinent to this dispute, the Claimant was a Track Department employee. He was terminated pursuant to Rule 2(j) of the Brotherhood

of Maintenance of Way Employees Agreement which reads, in pertinent part, as follows:

“Extension of seniority rights under this rule will expire unless returned to active service within two (2) years after last furloughed.”

The Claimant's last workday was April 27, 1998. He was absent without authority from May 11 through June 30, 1998. For reasons that are not set forth in the record, an Investigation that was scheduled to be held on July 13, 1998 was not held. Be that as it may, the Carrier retained him on the seniority roster. On October 16, 1998, he was bumped from the position he previously held and went into furlough status.

The Carrier mailed certified letters of recall to his last known address on January 3 and February 8, 2000. Both letters were returned marked “undeliverable.” After two years in furloughed status, the Claimant's name was removed from the seniority roster in accordance with self-executing Rule 2(j) of the Agreement.

The Claimant takes the position that Rule 2(j) is inapplicable because he was incarcerated during that period and did not receive the recall letters. Moreover, he maintains that he had requested and received a verbal leave of absence from his Supervisor covering the period of his incarceration. He makes the additional assertion that he may have been the victim of discrimination because other unnamed persons were allegedly returned to their positions on the seniority roster after a period of incarceration.

The Carrier maintains that it acted within the boundaries of Rule 2(j). It insists that it never granted a verbal leave of absence to cover the Claimant's period of incarceration; and, indeed, there are no provisions in the Agreement or any Carrier policy that would provide for a leave under such circumstances. Evidence of record shows that those facts were confirmed by the Claimant's Organization representative.

In any event, the Carrier noted that the Claimant's loss of seniority was not related to his incarceration; rather it was the result of his remaining in furlough

status for more than two years and the triggering of the self-executing provisions contained in Rule 2(j). During oral argument before the Board, the Claimant acknowledged his full and complete understanding of such provisions as well as the consequences of Rule 2(j).

After evaluating the evidence properly before the Board, we find the Carrier's arguments to be more persuasive than the Claimant's. Absent supporting documentation or evidence of any kind, it is exceedingly difficult for the Board to fathom the Carrier's granting a leave of absence to cover a period of incarceration. Because incarceration is a self-inflicted wound, the Claimant must shoulder the responsibility for all that follows. The Board is satisfied that the Carrier's action was well warranted.

In light of the foregoing result, there is no need to discuss the jurisdictional and procedural arguments advanced by the Carrier.

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 12th day of May 2004.