Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 39381
Docket No. MW-40027
08-3-NRAB-00003-070257
(07-3-257)

The Third Division consisted of the regular members and in addition Referee Lisa Salkovitz Kohn when award was rendered.

(Brotherhood of Maintenance of Way Employes Division -
(IBT Rail Conference
PARTIES TO DISPUTE: (
(BNSF Railway Company (former Burlington Northern
(Railroad Company)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier removed Mr. A. L. Walker from the seniority roster and when it failed and refused to reinstate him to the seniority roster with all rights and benefits restored [System File C-06-R030- 1/10-06-0078 (MW) BNR].

(2) As a consequence of the violation referred to in Part (1) above, the Carrier shall now be directed to allow '*** this claim on behalf of Mr. Walker for all hours worked by any junior employee from District 500 beginning January 17, 2006, and continuing until the Claimant is returned to service with seniority unimpaired. This claim is also for the reinstatement of all benefits for the Claimant effective January 17, 2006.'"

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.

The Claimant was hired on District 500 in July 2005, was furloughed in September and recalled in October, only to be displaced and once again placed into a furloughed status a few days later. In the interim, the Claimant changed residence and with the assistance of a fellow employee, he obtained, completed, and sent a change of address form (PCI Form) to the Carrier in October 2005 by regular U.S. mail. He never contacted the Carrier to verify that the form had been received. When the Claimant subsequently attempted to contact the Carrier's automated information system during January 2006, he was informed that his employee identification number was invalid and was denied access. The Claimant contacted the Carrier's manpower office and learned that his name had been removed from the seniority roster for failing to report within ten days following an October 28, 2005 recall notice that had been mailed to his former address. In fact, the recall notice, sent by certified mail, had been returned to the Carrier unclaimed. The Claimant mailed a letter to the Carrier's manpower office on January 16, 2006 explaining the circumstances, and subsequently contacted the Organization, which filed a claim on his behalf on February 1, 2006.

The Carrier denied the claim in part on the ground that it was not filed within the time specified by Rule 42. Rule 42A states that all claims or grievances must be presented in writing "within sixty (60) days from the date of the occurrence on which the claim or grievance is based." The time for filing a claim began on November 10, 2005, when the Claimant was removed from the seniority roster for failing to respond to the recall notice, the Carrier contends. The Organization asserts that the time for filing did not begin to run until January 2006, when the Claimant first became aware of the October 28 recall notice and his removal from the seniority roster, and notes that the Carrier was aware of the dispute as soon as the Manpower Office received the Claimant's January 16, 2006 letter requesting assistance with his situation.

After careful consideration of the circumstances presented, the Board concludes, with great reluctance, that the claim was not timely filed and must be dismissed. The occurrence on which the claim is based is the removal from the seniority roster, and that took place on November 10, 2005. In fact, as discussed below, the Claimant could have discovered the problem long before January 2006, because he had no acknowledgement that his change of address form had been received. Nothing in Rule 42A extends the time for filing until the date an employee learns of the occurrence on with the claim is based, and the Organization cited no decisions giving the Board the authority to read that extension into the Rule.

Even if the claim were timely, we would be unable to sustain it. In essence, it is a plea for leniency. Rule 9 is very clear:

> "When an employe is laid off by reason of force reduction, he must advise the Carrier in writing of any change of address, and telephone number, receipt of which will be similarly acknowledged. When new positions of more than thirty (30) calendar days' duration are established, or when vacancies of more than thirty (30) calendar days' duration occur, employes who have complied with this rule will be called back to service in the order of their seniority. Failure to return to service within ten (10) calendar days, unless prevented by sickness or unless satisfactory reason is given for not doing so, will result in loss of all seniority rights. . . ."

Thus, an employee is responsible for providing written notice of a change of address, and the Carrier is responsible for providing written acknowledgement of receipt of the notice. Only employees "who have complied with this rule" will be called back to service. The purpose of these mutual responsibilities is to prevent just the type of miscommunication that allegedly occurred here, and to relieve the parties from myriad squabbles over who bears responsibility when a recall notice fails to reach an employee.

We accept arguendo the Claimant's statement that he sent in a change of address form, because it was corroborated in part by a co-worker who said he helped the Claimant get the form. However, there is no evidence whatsoever that the

Claimant received written acknowledgement from the Carrier that the form had been received. He therefore had reason to know long before January 2006 that there might be a problem. While the Board recognizes that the Claimant, as a new employee, may have been unfamiliar with these procedures, his failure to be diligent in protecting his recall rights under Rule 9 is not a "satisfactory reason" that excuses his failure to return to service in response to the October 28, 2005 recall. Under the circumstances, the Carrier cannot be charged with a violation of Rule 9. While we might agree that these circumstance warrant leniency, we cannot impose that decision on management and would have to deny the claim on its merits even if it were timely.

AWARD

Claim dismissed.

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 8th day of December 2008.