

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42379
Docket No. MW-42737
16-3-NRAB-00003-140386**

The Third Division consisted of the regular members and in addition Referee Patricia T. Bittel when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
PARTIES TO DISPUTE: (
(BNSF Railway Company (formerly the St. Louis-
(San Francisco Railway Company)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier improperly terminated the seniority of Mr. J. Steward, III effective March 1, 2013 (System File 2600-BN42-131/12-13-0083 SLF).

(2) As a consequence of the violation referred to in Part (1) above, Claimant J. Steward, III shall now be ‘ . . . reinstated with his full seniority and be allowed to exercise his seniority.’”

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.

On February 15, 2013, the Manpower office sent Claimant a letter of recall to the address he had provided. The letter instructed him to report to Assistant Foreman Position No. 05302 on Region System Gang TRPX0023 within 10 calendar days of notification. It was sent via certified mail. The postal service made several attempts to deliver the letter: February 19, and 26 and March 6. The letter was returned to the Carrier "unclaimed." Since Claimant did not respond to the recall, his seniority date and name were removed from the roster as of March 1.

The Organization protested the removal, which the Carrier rejected on appeal. The claim was fully processed, without resolution. As a result, the Organization presented the dispute to the Board for hearing and decision.

Claimant had a series of serious personal and family problems including loss of his residence. As he worked to resolve these problems, he was slammed by job loss because he had not yet established a physical address. It was the Carrier's duty to notify him by the only means of communication he had at the time: his cell phone.

In fact, Claimant had advised Engineering Support in January of 2013 that his only means of communication was his cell phone. During January through March, he remained in communication with his immediate supervisor, Roadmaster Dustin Blackshear, and repeatedly filled vacancy positions during this time. Blackshear did not even know when Claimant's seniority was terminated, and called him only to learn he was not in the system any more. Though there is a rule saying employees should keep an address on file, Claimant was a 15-year employee working every chance he got. It is undisputed that his cell phone number was accurate and the Carrier could have used it to contact him.

The Carrier has to rely on the employee to provide the correct address, and it is the employee's responsibility to keep current the address on file. There is no evidence that Claimant provided written notice of a change of his address. Hence, it is Claimant that was in violation, not the Carrier. The termination was automatic since the rule is self-executing.

Rule 78 states:

"(a) Employees shall not be required to file their names and addresses with the Carrier when furloughed to protect seniority. However, employees have the obligation to keep the Carrier current as to their current address and phone numbers. They must file their

name and address in writing with their immediate supervisor for any subsequent change in their mailing address. An employee failing to return to service within 10 calendar days after being notified to do so (by mail or telegram to last known address) will forfeit all seniority rights. (This rule will not protect seniority rights of employees affected by it beyond two years). [November 15, 1996 Agreement.]”

In the view of this Board, this case involves an unusual situation warranting reinstatement of the Claimant, but without back pay. Insofar as this decision is based on unique circumstances, the Board deems this award non-referable.

AWARD

Claim sustained in accordance of the Findings.

ORDER

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 30th day of August 2016.