

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44766
Docket No. MS-46654
22-3-NRAB-00003-210323**

The Third Division consisted of the regular members and in addition Referee Paul S. Betts when award was rendered.

**(Gregory Doss
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company**

STATEMENT OF CLAIM:

The following statement of claim is quoted from the December 21, 2020 letter from Petitioner Doss to Arbitration Assistant Linda Gathings of the Third Division of the National Railroad Adjustment Board, advising the Division of his intent to file an ex parte submission.

“...This is to serve notice, as required by the June 23, 2003 Uniform Rules of Procedure of the National Railroad Adjustment Board, of my intention to file a Submission within 75 days covering an unadjusted dispute between me and the Union Pacific Railroad involving the following:

Reason for the claim is unjust firing & unfair representation. The remedy sought to grievance is my full job reinstatement, along with full back payment from the time of discharge to present date...”

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 record indicates the Petitioner was hired by the Carrier in July 2000. On July 27, 2018, the Carrier posted a Trackman position via bulletin MST11194 for System Gang 9162. Based upon his seniority, the Petitioner was awarded the position on August 10, 2018. The record indicates the Petitioner failed to provide Trackman service on Gang 9162 from the date of the initial assignment through and including September 25, 2018. As a result of the Petitioner's unauthorized absence and per Rule 14, the Carrier sent a certified letter to the Petitioner's address of record on September 25, 2018, which reads in relevant part:

"...This letter is to advise you that the company's records indicate you have been absent from your position of assignment as a System Trackman on Gang 9162, without out [sic] proper authority from August 10, 2018, through and including September 25, 2018.

Rule 14 of the agreement between the Brotherhood of Maintenance of Way and Union Pacific Railroad Company, reads as follows; [sic]

"Employees who are continuously absent without authority from their position for a period of thirty (30) or more calendar days may be treated as having resigned and their names removed from the seniority rosters".

You have seven (7) calendar days from the receipt of this letter to return to service or to show cause for your absence. Failure to do so will result in the voluntary forfeiture of your seniority and removal from all seniority rosters, thereby, ending your employment with Union Pacific..."

Following the September 25, 2018 letter noted above, the record indicates that the Petitioner failed to either return to his assignment on Gang No. 9162 or present evidence demonstrating good cause for his unauthorized absences. As a result, on October 4, 2018, the Carrier updated the Petitioner's status to terminated.

Initially, the Carrier argues that the Petitioner failed to a) comply with the strict time limits of Rule 14, and b) comply with the strict time limits for filing an on-property claim and for advancing his demand to the Division.

The Board notes that the record is void any communication from the Petitioner in response to the September 25, 2018 letter noted above. The record is also absent any kind of claim or grievance being filed under Rule 23. In fact, the Carrier received no communication on the matter at all until it was notified on April 29, 2021 by the NRAB of the Petitioner's intent to self-file, over 2 ½ years after the Petitioner was notified of his potential of voluntary forfeiture of seniority and loss of employment.

Rule 14 is self-invoking and contains specific procedural requirements and time limits for both the Carrier and Petitioner. Here, the Carrier complied with those requirements and the Petitioner did not. Furthermore, the Petitioner failed to submit a claim or grievance within sixty days from the date of the occurrence per Rule 23. As a result, the claim must be denied.

Although the Board may not have repeated every item of documentary evidence or testimony nor all of the arguments presented, we have considered all of the relevant evidence, testimony, and arguments presented in rendering this Award and Order.

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 29th day of July 2022.