

PUBLIC LAW BOARD NO. 2529

Joseph Lazar, Referee

AWARD NO. 37
CASE NO. 46

<u>PARTIES</u>)	BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
<u>TO</u>)	and
<u>DISPUTE</u>)	BURLINGTON NORTHERN RAILROAD COMPANY

STATEMENT
OF CLAIM:

1. Claim of the System Committee of the Brotherhood of Maintenance of Way Employees in behalf of Mr. M. A. Brandon because of the Carrier's violation of the current Agreement when it erroneously removed his name from the seniority roster.
2. The Carrier will now be required to restore Claimant's name to the roster and compensate him for all wage loss suffered as a result of the above referred to violation.

FINDINGS:

By reason of the Memorandum of Agreement signed November 16, 1979, and upon the whole record and all the evidence, the Board finds that the parties herein are employee and Carrier within the meaning of the Railway Labor Act, as amended, that the Board has jurisdiction of the subject-matter, and that the parties were given due notice of the hearing held.

On September 20, 1985, the Carrier recalled Claimant M. A. Brandon to service, stating:

"This is to advise you that you are hereby recalled to the service of the Burlington Northern Railroad Company; and you are to report to Regional Tie Gang No. 3 on September 20, 1985 at 8:00 A.M. to work as a Track Laborer. This gang will be working between Channing and Texline, Texas. You should call Roadmaster T. C. Little at Amarillo, Texas to find out exact location where work will begin.

Failure to report within 15 calendar days after receiving this notice will result in your loss of seniority."

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On September 23, 1985, the above letter was delivered to Claimant.

Claimant alleges that on October 3, 1985 he sent the following letter to the Carrier:

"October 3, 1985

Melvin A. Brandon
2703 Broadmoor
Wichita Falls, Texas 76305

Mr. R. G. Strong
P. O. Box 943
Ft. Worth, Texas 76101

Dear Mr. Strong:

At the present time I can not afford to travel 400 miles to work, due to the period of the last lay-off. My finances can not afford the trip.

I would like to request a leave of absence or an assignment closer to the Wichita Falls area.

Your consideration in this matter would be greatly appreciated.

Sincerely,

Melvin A. Brandon"

The Carrier, on October 10, 1985, sent the following letter to Claimant:

"Referring to your recall to service for September 30, 1985 to Regional Tie Gang #3 to work between Channing and Texline, Texas.

Pule 14 of Agreement between Fort Worth & Denver Railway Company and Brotherhood of Maintenance of Way Employees effective August 1, 1971 provides employees off in force reduction shall be notified when forces are to be increased. Employee must report for service within 15 calendar days from date notice of recall is received or forfeit seniority in class which recalled.

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Therefore, according to Rule 14 and the self executing provisions contained therein, along with your failure to report to service as requested, you are hereby notified that you are being removed from the Trackmen Seniority Roster.

Sincerely,

R. G. Strong
Asst. Supt. Roadway Maintenance"

On May 19, 1986, the Carrier denied the instant claim, stating in part:

"This refers to your letter of March 31, 1986, file F-47-85, about claim of Trackman M. A. Brandon, alleging Carrier removed his name from the trackman 's seniority roster per letter of October 10, 1985.

Claimant failed to respond to recall of September 20, 1985, received by claimant on September 23, 1985 via certified mail. Claimant's seniority was properly terminated in line with Rule 14. Your contention that claimant on some unknown date allegedly requested a leave of absence in writing, and that such request was not responded to by Carrier, therefore, claimant concluded he had been granted a leave is totally irrational. Carrier denies receiving such request.

It is your burden to prove all the essential elements of your claim, and you have offered nothing but allegations. Claimant did not comply with Rule 14 nor did he obtain proper authorization for leave of absence under Rule 30(c). Claimant must bear the responsibility of his inaction."****

Rule 14-RECALL TO SERVICE provides:

"When forces are increased, or vacancies occur, employees who have been cut off in force reduction or forced to displace in a lower class, shall be recalled to service in the order of their seniority.

Off in force reduction employees shall be notified of their recall to service by personal contact or in writing at their last address of record and must report for service within fifteen (15) calendar days from the date notice of recall is received.

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Employees failing to respond to recall to service under the provisions of this rule shall forfeit their seniority in the class to which recalled.

Positions may be filled temporarily pending the return to service of a recalled employee by the nearest qualified employee holding seniority rights in the class available without delay to the work."

It is undisputed that Claimant failed to respond to recall to service letter of September 20, 1985 received by him on September 23, 1985. The Carrier denies receiving Claimant's alleged letter dated October 3, 1985. Claimant offers no evidence of communication attempts or follow-up to his alleged letter dated October 3, 1985. In the circumstances of this particular case, the evidence of record considered in its entirety does not support a determination that Claimant complied with the provisions of Rule 14.

A W A R D

1. The Carrier is not in violation of the Agreement.
2. The claim is denied.


JOSEPH LAZAR, CHAIRMAN AND NEUTRAL MEMBER


C. F. FOOSE, EMPLOYEE MEMBER


L. MARES, CARRIER MEMBER

DATED: 12/17/87