

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 2746

BURLINGTON NORTHERN, INC.

-and-

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

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CASE NO. 5

AWARD NO. 5

Public Law Board No. 2746 was established pursuant to the provisions of Public Law 89-456. The parties, Burlington Northern, Inc. (hereinafter the Carrier) and the Brotherhood of Maintenance of Way Employees (hereinafter the Organization) are duly designated carrier and organization representatives as those terms are defined in Sections 1 and 3 of the Railway Labor Act.

After hearing and upon the record, this Board finds that it has jurisdiction to resolve the following claim:

"The Agreement was violated May 7, 1979, and each day thereafter when the Carrier failed to recall Steve Reents, Merlyn Sandstede, James A. Standsbury and Russell D. Wika to service and instead called a junior employee.

Claimants Steve Reents, Merlyn Sandstede, James A. Stansbury and Russell D. Wika each to receive eight (8) hours straight time pay for each work day and holiday plus any overtime that their seniority entitled them to work until they are returned to service with seniority rights and privileges unimpaired."

The instant claim arose when four employees in the Carrier's Maintenance and Way Department were laid off in a reduction-in-force, and were not recalled to service on dates which their seniority would ordinarily have required their recall. The dispute involves Rules 8D and 9 of the parties' Agreement, which

read in pertinent part as follows:

"Rule 8 - Force Reduction.

"(d) At the same time as notice of reduction is given, under Section A of this Rule, the officer making the reduction will see that a list showing names, classification and location of employees retained in service in the various crews in the seniority district, is posted in tool houses and outfits, so that seniority may be exercised without unnecessary loss of time. When individual reductions in such force are made, employees cut off will be given similar advice at time of notice of reduction as to junior employees in service whom their seniority would entitle them to displace.

"Rule 9 - Retention of Seniority by Laid Off Employees.

"When an employee laid off by reason of force reduction desires to retain his seniority rights, he must within ten (10) calendar days of date so affected, file his name and address in writing on the form supplied for that purpose..."

The employees were not recalled because they had not filed their names and addresses as required by Rule 9, within ten (10) days of the force reduction. The Organization asserts that since Rule 8 requires the Carrier to keep a list enabling laid-off employees to displace junior employees retained in service, it was the Carrier's responsibility to provide form 15364 to employees so they could meet the filing requirements of Rule 9. The Organization also argues that the Carrier's failure to notify the Claimants that their names and addresses were not properly filed on form 15364 violated the Agreement. The remedy sought is eight (8) hours straight time pay for each day that their seniority would have entitled the Claimants to work.

The facts developed in the record demonstrate that the forms were available but that the Carrier did not inform the Claimants that they had failed to file them. The issue presented is whether it was the responsibility of the Carrier or of the Claimants to see that the forms were properly filed. This Board holds that it was incumbent upon the Claimants to see that the forms were filed.

The record discloses that the forms were available; that the Claimants had filed the same forms in past lay off situations and, therefore, knew that they should do so; and, that the Claimants made no request for the forms. Nothing in the Agreement requires the Carrier to place a form in the hands of each employee as he or she is laid off. The Carrier need only make the forms available to employees who request them. In this case none of the Claimants made any attempt to fill out or file a form. And while the forms may not have been on hand when the reduction-in-force was announced, a simple phone call or letter would have been enough to secure one. However, none of the Claimants made any such attempt. The Carrier should not be held responsible for the Claimants' lack of diligence. Accordingly, the claims will be denied.

AWARD: Claim denied.

F. H. Funk
F. H. Funk,
Organization Member

C. Lane
C. Lane,
Carrier Member

Richard R. Kasher
Richard R. Kasher, Chairman
and Neutral Member

July 6, 1981
Saint Paul, Minnesota