

PUBLIC LAW BOARD NO. 2960

AWARD NO. 117
CASE NO. 196

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Chicago & North Western Transportation Company

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it improperly removed Claimant K. T. Richmond's name from the Suburban Division Seniority Roster. (Organization File 9KB-4084T; Carrier File 81-85-171)
- (2) Claimant K. T. Richmond shall be reinstated with seniority and all other rights unimpaired and compensated for all wage loss suffered.

OPINION OF THE BOARD

This Board, upon the whole record and all of the evidence, finds and holds that the Employee and Carrier involved in this dispute are respectively Employee and Carrier within the meaning of the Railway Labor Act, as amended, and that the Board has jurisdiction over the dispute involved herein.

This case involves the unambiguous provisions of Rule 10 which reads as follows:

"Employees whose positions have been abolished or who have been displaced who desire to retain their seniority without displacing employees with less seniority must, within fifteen (15) calendar days, file their name and address .

with the Assistant Division Manager-Engineering and thereafter notify him in writing of any change in address. An employee who is absent on vacation or leave of absence when his job is abolished or he is displaced will have the same rights, provided such rights are exercised within ten (10) calendar days of his return to active service.

"Employees complying with this rule will continue to accumulate seniority during the period they are furloughed."

This Board has been faced with other cases under this rule and had indicated that regardless of the equities the Rule must be applied as written.

In this case it is undisputed that the Claimant was furloughed on October 28, 1984, and that to retain his seniority he would have to file a "rights retainer" no later than November 12, 1984.

Beyond this the facts are disputed. There is a retainer in the record dated in the Claimant's handwriting November 12, 1984. The form was initiated by the Chief Clerk, Sylvana Dunski. The Claimant indicates he went into the engineering office on the 12th and filed the form. The Carrier responds that the fact that the form was dated the 12th should have no bearing since the Claimant did not appear in the office until the 14th. The Clerk suggested at this time that he back date the form. However, later that day the Clerk was instructed to write the following letter:

"This letter is to advise you that I made a mistake in instructing you to back date your furlough papers when you were in the office on November 14, 1984. Your furlough status is being investigated at this time to determine whether you performed any compensated service, thereby allowing extension of the time period in which you are allowed to go on furlough. If no compensated service was performed, your furlough application may be rejected."

The Carrier also points out that their copy of the form shows a date received stamp of November 14, 1984.

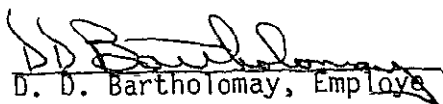
It is the opinion of the Board that the evidence more reasonably supports the Carrier's assertion that the Claimant did not appear in the office until November 14, 1984. Thus, that he back dated the form, even at the suggestion of the Clerk, cannot change the plain fact he did not attempt to file the form until it was too late and his seniority had been terminated.

AWARD

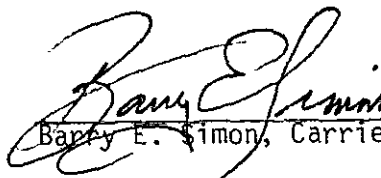
The Claim is dismissed.



Gil Vernon, Chairman



D. D. Bartholomay, Employee Member



Barry E. Simon, Carrier Member

Dated: Oct 21, 1986