

PUBLIC LAW BOARD NO. 2960

AWARD NO. 99  
CASE NO. 133

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 closed the service record of Foreman D. R. Ulve.  
(Organization File 9T-4507; Carrier File 81-84-188).
- (2) Foreman D. R. Ulve shall have his name placed on the appropriate seniority roster, returned to service 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 application 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 calendar days of his return to active service.

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

The Claimant was furloughed on December 2, 1983. Thus, according to Rule 10 he was obligated to file a rights retainer by December 17, 1983, or forfeit his seniority.

The crux of the dispute relates to whether the Claimant did in fact file his rights retainer. He claims he sent it to the Carrier via U.S. mail. The Carrier contends that no retainer was received by the Assistant Division Manager's office. In addition, They note that copies of the retainer were not received by the Roadmaster or the Union.

An examination of the record shows that there is simply no evidence, other than mere assertion, that would support the Claimant's case. The Board was faced with a similar situation in Case No. 19, Award 20. Unfortunately, without acceptable evidence that the Claimant satisfied his affirmative obligation under the rule, the Claimant's seniority must be deemed terminated.

AWARD:

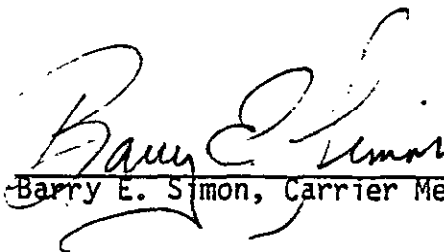
The Claim is denied.



Gil Vernon, Chairman



H. G. Harper, Employee Member



Barry E. Simon, Carrier Member

Dated:

Sept 19, 1985