

PUBLIC LAW BOARD NO. 3308

Award No. 10
Case No. 10

PARTIES Brotherhood of Maintenance of Way Employees
TO
DISPUTE The Atchison, Topeka and Santa Fe Railway Company

STATEMENT
OF CLAIM

"Claim that former System Plow Gang (Group 11, Class 2) employee Harry T. Daves be reinstated to service with seniority, vacation, all benefit rights, pay for wage loss and/or otherwise made whole, account the claimant's name being improperly removed from the seniority roster for failure to respond to recall."

FINDINGS Upon the whole record the Board finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

The Claimant was a furloughed employee subject to recall to service. In a letter dated March 26, 1981, Claimant was advised:

"In accordance with Article 2, Section (c), you are being recalled to service at Marmon, New Mexico on the Albuquerque Division effective April 13, 1981. Please report to Marmon, New Mexico on April 13, 1981 at 7:00 A.M. There will be no chartered buses. If you need a ride, you must notify this office by April 9, otherwise you will have to provide your own way.

Failure to report as indicated above will result in loss of seniority. Please acknowledge this letter when copy is received by contacting the Employment Office at (505) 868-5061 immediately."

Claimant failed to report on April 13, 1981, as directed. In a letter dated April 21, 1981, (certified mail #1475204-Return Receipt Requested) Claimant was advised:

"As a result of your failure to report within fifteen (15) days after recall for assignment at Marmon, New Mexico, in accordance with Rule 2, Section (c), you are being dropped from the Group 11, Class 2, System Flow Lang seniority roster with forfeiture of seniority rights."

That portion of Rule 2, Section (c), pertinent to the dispute at hand reads:

"Failure to meet any of the requirements as above specified, failure to report on the date indicated in the notification of recall, not to exceed fifteen (15) calendar days from date of notification of recall forwarded to the employee's last known address, without a satisfactory reason, will result in forfeiture of seniority in the class where recalled."

The record reveals that Claimant's General Chairman received a copy of the above quoted letter dated April 21, 1981.

In a letter dated June 23, 1981, the Organization initiated the dispute which is now before this Board.

The Carrier, in its initial letter of denial and throughout the handling on the property, maintained that the dispute was not timely filed in accordance with the provisions of Rule 14, Section (a) reading in part:

"(a) All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the Company authorized to receive same, within sixty (60) days from the date of the occurrence on which the claim or grievance is based xxx."

The Organization maintains that the time limit was not violated for the reason that:

"The date Mr. Daves signed the receipt for the

letter would be the date of the occurrence on which our claim and grievance was based."

The Board holds that the date on which the time limit began to run, in the instance now before it, was the date of Carrier's letter dated April 21, 1981. However, even if the Board follows the thinking of the Organization the time limit would have expired on June 21, 1981. Since the dispute was not initiated with the Carrier until the Organization's letter of June 23, 1981, it was still beyond the sixty (60) day requirement of the Agreement.

We find Carrier's procedural objection well founded. Since the record establishes the fact of the procedural flaw charged by Carrier, we must take note of it. We cannot properly ignore or refuse to enforce valid objections because they are of a technical nature.

Many decisions of various Divisions of the National Railroad Adjustment Board have held that we are without jurisdiction to hear claims and/or grievances which have not been presented and/or progressed in accordance with contractually imposed time limits. It is true that the strict application of such a rule may preclude us from considering a claim on its merits and this may not help the day-to-day relations of the parties. Nevertheless, the parties themselves, by the terms of the negotiated Agreement have indicated their intentions regarding the timely submissions of claims and/or grievances.

For the reasons hereinabove stated, we are precluded from considering the merits; the claim must be dismissed.

Even if we were able to consider the merits, the claim is without

Agreement support. The Claimant was required to report on a specific date, which allowed him fifteen days or more under the requirement of the rule. When he failed to report as specified, he forfeited his seniority.

Award Claim dismissed.

Clarence H. Herrington
Clarence H. Herrington
Neutral Member

McCarmon
Carrier Member

J. E. F. Fleming
Organization Member

Dated at Chicago
February 22, 1933