

PROCEEDINGS BEFORE PUBLIC LAW BOARD NO. 3781

AWARD NO. 50

Case No. 50 (118)

Referee Fred Blackwell

Carrier Member: J. H. Burton

Labor Member: W. E. LaRue

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

vs.

CONSOLIDATED RAIL CORPORATION

STATEMENT OF CLAIM:

"I appeal to you the case of Mr. William J. Anderson ID #761146, address, 1319 Woodland, Toledo, Ohio 43607, working on the Toledo Division, Toledo, Ohio.

I received a copy of letter dated June 6, 1986 from Mr. J. J. Kasprzycki, Division Engineer, Toledo, Ohio concerning Mr. William J. Anderson advising him, effective May 1, 1986 his position on the Cat Gang was abolished. As of this date, you failed to provide this office any explanation as why you have not made a bump and worked since that date. You have been medically qualified for duty since April 30, 1986.

Therefore, you have been in violation of the Brotherhood of Maintenance of Way Employees Agreement in regard to Rule 4, Section 2, paragraph (b), and Rule 28.

In accordance with the above, you have forfeited all your seniority with Consolidated Rail Corporation in all capacities, effective this date, June 6, 1986.

Mr. Anderson is not in violation of the Rules mentioned above, therefore, I must respectfully request that he be called back to work and compensated all time lost."

FINDINGS:

Upon the whole record and all the evidence, after November 8, 1990 hearing in Washington, D. C., the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted by agreement and has jurisdiction of the parties and of the

subject matter.

OPINION

This case arises from the Claimant's appeal and protest of the Carrier's action of June 6, 1986, whereby the Carrier terminated his employment status with the Carrier due to his failure to exercise his seniority in timely manner under Rule 4, Section 2. (b) and Rule 28 of the applicable Agreement.

The position of the Claimant on CAT Gang 1 Toledo, Ohio, was abolished at the close of business on May 1, 1986. At the time of the abolishment of his position the Claimant had seniority over employees working at Airline Yard, Toledo, Ohio, but he failed to exercise his seniority to displace one of these employees during the ten (10) day period following abolishment allowed by Rule 4, 2. (b) and consequently, by Carrier letter dated June 6, 1986, the Claimant was informed that his seniority had been forfeited in accordance with said Rule.

After due study of the foregoing and of the whole record, inclusive of the parties' arguments in support of their respective positions in the case, the Board concludes that the failure of the Claimant to exercise his seniority to displace a junior employee within the time period allowed by Rule 4, 2. (b) provided a proper basis for the Carrier to institute action regarding forfeiture of the Claimant's seniority under the self-executing provision of the Rule.

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The Claimant has placed himself in a "Catch 22" position in this case.

When the Claimant failed to notify his supervisor of any extenuating circumstances following the abolishment of his position on May 1, 1986, the Claimant violated two (2) self-executing contractual obligations.

In the first instance the Claimant was obliged to exercise his seniority in accordance with Rule 4, Section 2. (b).

"failure to exercise seniority to any position within his working zone (either divisional or Inter-Regional) shall result in forfeiture of all seniority under this Agreement, except employees who decline to exercise Inter-Regional seniority shall only forfeit all Inter-Regional seniority."

Failing to notify the supervisor of any extenuating circumstances this rule was self-executing and the Claimant forfeited his seniority.

Even if the Claimant was, as the Organization suggested, unavailable to exercise seniority because of health reasons, he was obliged to notify his supervisor within fourteen (14) days of the reason for his absence.

Rule 28 (b), again is a self-executing rule.

"Rule 28 (b):

Except for all sickness or disability, or under circumstances beyond his control, an employee who is absent in excess of fourteen (14) consecutive days without receiving permission from his supervisor will forfeit all

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seniority under this Agreement. The employee and the General Chairman will be furnished a letter notifying them of such forfeiture of seniority. The employee or his representative may appeal from such action under Rule 27, Section 3."

The record is barren of any extenuating circumstances nor does the record contain any notification the Claimant has alleged to notify his supervisor.

The record being barren of any extenuating circumstances this Claimant has forfeited all seniority by virtue of the self-executing provision of both Rule 4, Section 2. (b) and Rule 28 (b), and the Carrier has not violated the collective bargaining agreement.


AWARD:

Claim denied.

BY ORDER OF PUBLIC LAW BOARD NO. 3781.



Fred Blackwell, Neutral Member


J. H. Burton, Carrier Member
W. E. LaRue, Labor Member

Executed on Dec. 13, 1990

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