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B.M.W.E.

PUBLIC LAW BOARD NO. 4104

Case No. 59

PARTIES TO DISPUTE:

Brotherhood of Maintenance of
Way Employees

vs.

Burlington Northern Railroad

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier improperly closed the service record of Track Laborers D.V. Jones and T. Mills.

2. The Claimants shall be reinstated with all rights unimpaired, their personal records shall be corrected to reflect their respective seniority dates established during July, 1981 and they shall each be compensated for all wage loss suffered as a consequence of the violation referred to in Part (1) hereof beginning sixty (60) days prior to October 14, 1985 and continuing until such time as the violation is corrected."

OPINION OF BOARD: Claimants, D.V. Jones and T.W. Mills, were track laborers in the Carrier's Maintenance of Way Track Sub-department performing their first service on July 31, 1981. On September 11, 1981, Claimants were laid off due to a force reduction. Under provisions of Rule 9 of the Agreement, employees must file their name and address on Form 15364 if they desire to retain their seniority rights and be recalled for service. Claimants did not file the form with the Carrier within the required ten days which resulted in the loss of their seniority.

On October 14, 1985, the Organization filed this claim on Claimants' behalf. It contends that the claim was timely filed in that it was not initiated four years late as contended by Carrier. It asserts that the claim was initiated on behalf of Claimants based on the date of July 18, 1985 when Carrier advised the Claimants that their seniority had been terminated. It argues that

Claimants had no knowledge of such termination prior to July 18, 1985. Thus, it maintains that the claim was filed within the sixty day time limitation stated in Rule 42D.

As to the merits, the Organization asserts that Claimants both timely filed recall notices upon being furloughed in September 1981. It further maintains that Claimants made periodic inquiries during 1982, 1983, 1984 and 1985 as to employment opportunities. Since Claimants were never informed that their seniority had been terminated for failure to file recall notices in September 1981, the Organization maintains that Carrier's defense is unsupported. In the Organization's view, Claimants believed that they had maintained an employment relationship with the Carrier, but only that their accumulated seniority was not sufficient to allow them assignment to positions within their seniority district. As such, it asks that the claim be sustained on its merits.

Carrier, on the other hand, denies that it violated the Agreement. First, it contends that the claim was not timely filed as per Rule 42D. It asserts that the initial claim letter was not addressed to the Carrier until October 14, 1985, four years after the time limit provision. Thus, Carrier argued that the claim should be denied on procedural grounds.

On the merits, Carrier asserts that Claimants did not file their names and addresses for recall. It states that the required form, #15364, contains three carbon papers. The Carrier supervisor to whom such form is submitted retains the original copy. The remaining two copies are given to the appropriate Organization

representative and to each employee. Carrier maintains that the Organization was not able to supply any of the remaining copies as proof that Claimants had completed the forms. As such, Carrier concludes that the Claimants did not properly complete the forms as required by Rule 9. Accordingly, it asks that the claim be rejected on its merits, as well as procedural grounds.

Our review of the record evidence convinces us that the claim must fail. This is so for several reasons.

First, there is the procedural issue to address. The Organization asserts that Claimants did not become aware of their termination until July 18, 1985 and then filed a claim on October 14, 1985. Under these circumstances, the October 14, 1985 claim was within the sixty-day time limit. Accordingly, the Organization complied with Rule 42D here. Thus, the case must be decided on its merits.

Rule 9 reads:

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, with his foreman or supervisor with copy to General Chairman, receipt of which will be acknowledged in writing by the Company.... Failure to file his name and address or failure to return to service within ten (10) calendar days, unless prevented by sickness, or unless satisfactory reason is given for not doing so, will result in loss of all seniority rights....

That rule refers to the specific procedure that must be followed by a laid-off employee seeking to retain his seniority rights. It requires the completion of a form by the employee with copies given to the Organization, Carrier and the employee. The

record indicates that the form was never completed in that none of the parties involved were able to produce such copies. Nothing in the Agreement would allow retention of such rights without the completion of the form. Under these circumstances, Carrier appropriately terminated Claimants' seniority.

Accordingly, and for the foregoing reasons, the claim is denied.

FINDINGS: The Public Law Board No. 4104 upon the whole record and all of the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act as approved June 21, 1934;

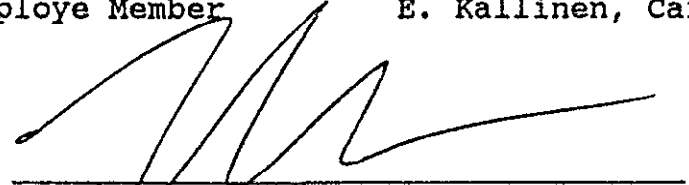
That the Public Law Board No. 4104 has the jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD: Claim denied.


P. Swanson, Employee Member


E. Kallinen, Carrier Member


Martin F. Scheinman, Neutral Member

1/2/91