

PUBLIC LAW BOARD NO. 4104

Case No. 79

PARTIES TO DISPUTE: Brotherhood of Maintenance of Way Employees
vs.
Burlington Northern Railroad Company

STATEMENT OF CLAIM:

Claim on behalf of Section Foreman C.D. Handleland, for reinstatement of seniority which was removed by Carrier account failure to show for recall at Trident, Montana, on February 25, 1987, in violation of Rule 9 of the Schedule Agreement.

OPINION OF BOARD: Claimant was furloughed from service on February 2, 1987. He was subsequently recalled to a foreman's position at Trident, Montana, to fill a vacancy by written notification in certified letter of February 25, 1987 from General Roadmaster W.G. Dahlin. That recall letter clearly informed him of his obligation along with a telephone number to call in the event he had any questions. Claimant did not return and report to service and forfeited his seniority per Rule 9 of the Schedule Agreement.

Carrier states there was no response from Claimant to the recall letter and no record of either telephone calls nor letters received from Claimant until letter of June 5, 1987, wherein he filed a displacement notice to return to service as a Relief Track Inspector at Thermopolis, Wyoming. Claimant's personal record was closed with entry of March 9, 1987, for failure to show for recall.

The applicable Rule 9, as here pertinent, provides:

"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."

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It is plain from the record that the General Roadmaster complied with Rule 9 in giving Claimant notice of recall and that Claimant did not return or report to service within ten days prescribed by Rule 9, and that even when informed of recall he made no attempt to report for duty or to report a satisfactory reason for not doing so.

The Agreement places the responsibility of protecting seniority rights on the employee, however, the record shows Claimant may have been under the impression his seniority was protected, and even received some misinformation in that regard, but he effectively risked taking himself out of service by making no effort to contract Carrier as instructed.

However, in view of the peculiar circumstances involved in this claim, Claimant will have his seniority and all other rights reinstated as if he had not been removed from service, but without payment for time lost. Under these circumstances, however, in the context of this claim, it is not our intent that this Award be of any precedential value. It is intended only to dispose of the instant claim.

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

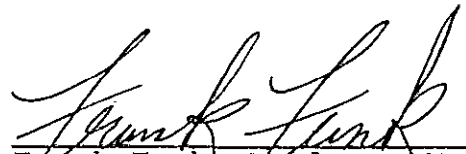
That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor act as approved June 21, 1934;

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

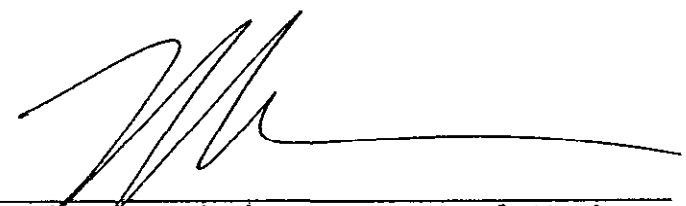
That the Agreement was violated in part.

AWARD:

Claim sustained to the extent indicate in the Opinion.


Frank Funk, Employee Member


E.J. Kallinen, Carrier Member


Martin F. Scheinman, Neutral Member

1/24/88