

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4370

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

BURLINGTON NORTHERN RAILROAD COMPANY

AWARD NO. 13

Case No. 13

STATEMENT OF CLAIM

1. That the Carrier violated the agreement when he removed Mr. M. A. Bullards name from the Seniority Roster without just and sufficient cause.

2. It further violated the provisions of the agreement when Carrier employe other than the designated Officer of the Carrier to receive such claims denied the General Chairman's claim on June 4, 1987.

3. Because of the violations outlined above the Carrier will now be required to reinstate Claimant to the former position of seniority and all other rights restored unimpaired.

F I N D I N G S

Claimant, who was in furlough status, was sent notice of recall to service by letter dated March 24, 1987. He acknowledged receipt of the letter on March 26. He failed to report for service within the 15-day limit as required by Rule 14.

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EMPLOYEE RELATIONS

The Organization alleges that the Claimant sought a leave of absence owing to personal problems. This is not substantiated in the record. In any event, no such leave was authorized by the Carrier.

Rule 14 provides as follows:

Employees failing to respond to recall to service under the provisions of this rule shall forfeit their seniority in the class to which recalled.

The Carrier consequently terminated the Claimant's seniority as a Trackman (the "class" to which he was recalled). The Carrier denies that the Claimant carried seniority in any other class, but this aspect of the matter was not presented to the Board for resolution.

The Organization argues, however, that the claim should be sustained on a procedural basis, since "the Carrier's officer designated to receive . . . claims, Mr. G. W. Williams, never responded to the claim".

There is no question that Division Superintendent Williams was the Carrier officer to receive claims. As provided in Rule 27, Williams held the "office of the Company" so designated. Rule 27 further provides that "the Company" shall notify in writing "whoever filed the claim or grievance" within 60 days.

In this instance, the General Chairman wrote to the General

Roadmaster on April 23, 1987 requesting a "review of records" concerning the Claimant's seniority standing. This was answered on April 28, 1987 by "E. A. Wilson for G. W. Williams", providing the requested information. The General Chairman wrote to Williams on May 22, 1987 requesting other information, this time the copy of a letter of recall. This in turn was answered by Wilson "for G. W. Williams" on June 4, 1987, providing copy of the requested letter.


Following this, on July 22, 1987, the General Chairman wrote to the Director of Employee Relations alleging that the Division Superintendent had failed to respond to a claim within 60 days and requesting that the claim "be allowed" on this basis.

The Organization properly may insist on conformance by the Carrier to Rule 27, with special reference to the time limits therein. In this instance, however, the Board finds that the Carrier did not violate Rule 27. The two letters mentioned above sought information; such was provided, and there is no reason that this information could not be provided by a Carrier representative writing "for" the Division Superintendent. The second Organization letter (on May 22, 1987) simply raised the question concerning the Claimant's seniority in positions other than Trackman. As will be seen from the Statement of Claim, above, this

was not the issue presented to the Board for resolution. The procedural issue raised by the Organization is without substance.

A W A R D

Claim denied.



HERBERT L. MARX, JR., Referee



C. F. Foose, Employee Member



R.J. Schneider, Carrier Member

NEW YORK, NY

DATED: