

RECEIVED-DENVER
LABOR RELATIONS

JUL 15 91

MS	✓		DVR		
EL			EIK	✓	
IL			IM	✓	
HW			RIS	✓	
WMS			CIA		
WAM			KWC		
CCW			DLM		

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4370

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

BURLINGTON NORTHERN RAILROAD COMPANY

AWARD NO. 29

Case No. 31

STATEMENT OF CLAIM

1. The Carrier acted precipitously in removing Claimant from the seniority roster for his alleged failure to file his name and address within the prescribed time. Said action being in violation of the provisions of the current Agreement and the general tenets of fair play, when the Carrier failed to apply the rules uniformly on a system wide basis.

2. The Carrier will now be required to reinstate Claimant to his former position with seniority and all other rights restored unimpaired and compensation for all wage loss suffered.

F I N D I N G S

Claimant was furloughed on September 18, 1989. Under Rule 13 (c) he had 15 days -- or until October 3, 1989 -- to file his name and current address in order to avail himself of the right to recall. Rule 13 (c) reads as follows:

Filing Address (c): Employees out of service account force reduction desiring to avail themselves of the right to recall must file their name

and current address in writing with the Chief Engineer within fifteen (15) calendar days from the date cut off in force reduction. Employees who fail to file their name and current address under these provisions shall forfeit all seniority rights.

The Carrier wrote to the Claimant on October 19, 1989, stating that his "personal record has been closed" owing to his failure to make timely filing of his name and address.

The Organization produced a copy of a Form 15364 (with name and address; requesting recall) dated September 26, 1989. This form did not contain the Foreman's approval signature. The Carrier admits to receiving on October 11 and 12 two such notices, including the Foreman's approval signature and also dated September 26.

The Organization initiated a claim on the Claimant's behalf on December 4, protesting the closing of his personal record. The Carrier argues that such claim is untimely, citing Rule 27 (a) which requires presentation of a claim within 60 days of the "date of the occurrence on which the claim . . . is based". The Carrier argues that such date was October 4; that is, immediately following the 15-day period specified in Rule 13 (c). The Board does not agree. Action on this matter was effectively taken on October 19,

when the Carrier wrote to the Claimant. The claim was timely filed within 60 days thereafter.

The Organization argued that the Carrier's action is defective on at least two counts ---first, that there was currently no "Chief Engineer" to which notices could be addressed; and second, that the Carrier has not consistently enforced the rule, making other cited exceptions.

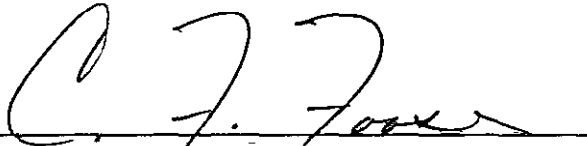
It is at least arguably possible that the Claimant did send the three separate notices on or about September 26 in timely fashion and was not responsible for the ensuing delay in the Carrier's receipt thereof. Given all the circumstances, the Board concludes that the Claimant should not be penalized with total loss of recall rights. By the time the Carrier exercised its right to close the Claimant's personal record, it had already received two notices from the Claimant. The Carrier cannot be totally faulted in the initial implementation of Rule 13.(c), however, and so the Board finds that back pay is not warranted. The Award will be confined to ordering restoration of the Claimant's seniority rights and recall to duty when appropriate.

A W A R D

Claim sustained to the extent provided in the Findings.
The Carrier is directed to put this Award into effect within
thirty (30) days of the date of this Award.



HERBERT L. MARX, JR., Chairman and Neutral Member



C. F. FOOSE, Employee Member



R. J. SCHNEIDER, Carrier Member

NEW YORK, NY

DATED: