

RECEIVED-DENVER
LABOR RELATIONS

JUL 15 91

JMS	✓		EWK		
RL			EJK	✓	
CLJ			LM	✓	
FW			RJS	✓	
WMS			CJA		
MM			KWC		
OW			DLW		

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4370

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

BURLINGTON NORTHERN RAILROAD COMPANY

AWARD NO. 31

Case No. 33

STATEMENT OF CLAIM

1. The Carrier violated the provisions of the current Agreement when it improperly removed Mr. David Glover's name from the appropriate seniority rosters.

2. The Carrier shall now be required to restore Claimant's seniority in all groups and classes and restore Claimant to his rightful position and compensated for all wage and benefit loss suffered beginning January 29, 1990.

F I N D I N G S

The Claimant was furloughed effective December 29, 1989. This brought into play Rule 13, which reads in pertinent part as follows:

Exercising Seniority (b): An employee other than a trackman losing his position through force reduction, abolishment of position or displacement must exercise seniority displacement rights by displacing an employee his junior in the class in which loss of position occurred. If there are no employees his junior working in

the class, such employe must exercise seniority held in succeeding lower classes until his seniority is exhausted.

A trackman losing his position account force reduction, may exercise seniority over any employe his junior whether assigned to a section or to an extra gang.

All displacements must be made within ten (10) calendar days from the date the employe loses his position, except that an employe losing his position while off account sickness, on leave of absence, or vacation, shall be allowed ten (10) calendar days to exercise displacement following his return.

Filing Address (c): Employes 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. Employes who fail to file their name and current address under these provisions shall forfeit all seniority rights.

The record is clear that the Claimant neither exercised his seniority within 10 days nor filed within 15 days the required notice as to recall. He was not off-sick, on leave or on vacation on the date he was furloughed.

The Claimant alleges that he was on "vacation" and leave from January 2 through January 12. This, however, cannot be substantiated since he was in furlough status. His receipt of requested vacation pay allowance does not place him in continued active employee status.

The Claimant further alleges that he intended to report for work on January 15 but could not do so owing to incurring

an injury on that date. As the Carrier points out, this date was already beyond the 15 days during which filing of address notice was required. The Claimant did not report, in fact, until January 29. The record includes no documentation as to the reason for such delay.

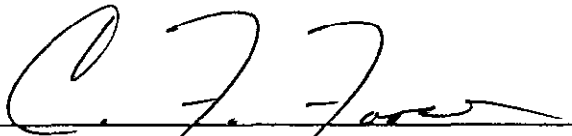
Contrary to the situation reviewed in Award No. 29, this is not a case of an allegedly tardy filing of the required address information. Here, there is no record of any such filing. The Carrier cannot be faulted in this instance as to the implementation of Rule 13.

A W A R D

Claim denied.



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



C. F. FOOSE, Employee Member



R. J. SCHNEIDER, Carrier Member

NEW YORK, NY

DATED: