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NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 5564

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES)	
)	Case No. 8
and)	
)	Award No. 6
NORTHEAST ILLINOIS REGIONAL COMMUTER)	
RAILROAD CORPORATION)	

Martin H. Malin, Chairman & Neutral Member
R. C. Robinson, Employee Member
J. E. Butler, Carrier Member

Hearing Date: November 17, 1997

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 employee L. C. Harper (Carrier's File 08-13-242).
2. As a consequence of the violation referred to in Part (1) above, the Claimant shall be returned to service with seniority and all other rights unimpaired.

FINDINGS:

Public Law Board No. 5564, upon the whole record and all the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute herein; and, that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

On January 31, 1996, Claimant was furloughed. Claimant filed his name and address on February 12, 1996. Carrier terminated Claimant's seniority pursuant to Rule 9 (G), which provides, in relevant part:

- (1) When employees are furloughed by reasons of force reduction and desire to retain their seniority rights, they must file their name and address in writing on the form provided by the Carrier not later than ten (10) calendar days from date cut off. This notice from the employee must be sent in triplicate to the Carrier official extending the

notice of force reduction and a copy of this notice must be sent to the General Chairman at the same time. The officer receiving said notice shall date, sign and return one copy each to the employee and the General Chairman. Periodic renewal of address is not thereafter required, but it is the responsibility of the employee to advise promptly in similar manner of any change in address.

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(3) Failure to comply with Paragraphs (1) and (2) of this Section will cause automatic forfeiture of seniority and employment relationship with the Carrier.

Carrier contends that Rule 9(G) is clear, that it placed on Claimant the responsibility to file his name and address within ten calendar days of his furlough, i.e. by February 10, 1996, that Claimant failed to do so and that Rule 9(G) is self-executing. Carrier's interpretation is literally correct. Nevertheless, there are several factors present in this case which mitigate against the harshness of Rule 9(G).

First, Claimant did not abandon his employment. On the contrary, Claimant sought other positions into which he could bump. Specifically, on February 1, 1996, Claimant spoke with a supervisor in the B & B Department about bumping a junior employee. It was not until February 8 or 9, 1996, that Claimant learned that he could not bump the junior employee because the employee worked in the Water Department and Claimant had no water seniority rights. Second, it appears that Claimant and a number of other employees believed that a furloughed employee had ten working days, rather than ten calendar days, in which to file. Carrier may have contributed to their confusion because of some instances in prior years where Carrier did not enforce Rule 9(G), including one year in which Carrier did not enforce Rule 9(G) against Claimant. Finally, the tenth day on which Claimant could have filed his name and address fell on a Saturday. (Claimant had only learned in the prior one or two days that he could not bump the junior employee in the Water Department.) The office was closed on Saturday and Sunday. Thus, on the tenth day, it literally was impossible for Claimant to comply with Rule 9(G) by filing his name and address with the official who extended the notice of force reduction. Claimant did comply on Monday, February 12, the next day in which compliance was possible.

Several boards have held that under similar circumstances, an employee should not be held to the literal letter of similar ten day rules and have sustained claims for reinstatement. See, e.g., Third Division Award 25683; Public Law Board No. 3460, Award No. 50. The claim seeks only Claimant's return to service with seniority and other rights unimpaired. It does not seek lost wages. In line with the above-cited decisions, we will

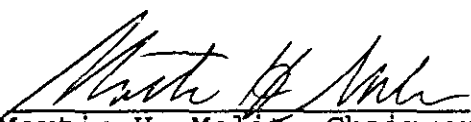
sustain the claim.


AWARD

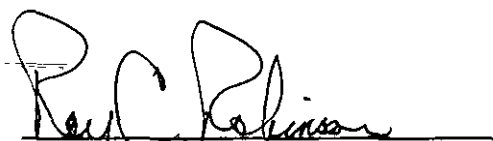
Claim sustained.

ORDER

The Board, having determined that an award favorable to Claimant be made, hereby orders the Carrier to make the award effective within thirty (30) days following the date two members of the Board affix their signatures hereto.


Martin H. Malin, Chairman


J.E. Butler,
Carrier Member


R.C. Robinson
Employee Member

Dated at Chicago, Illinois, December 18, 1997.