

PUBLIC LAW BOARD NO. 1844

AWARD NO. 83

CASE NO. 102

PARTIES TO DISPUTE:

Brotherhood of Maintenance of
Way Employes

and

Chicago and North Western
Transportation Company

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when, without the benefit of a fair and impartial hearing, it arbitrarily removed Trackman A. M. Donatell's name from the Twin Cities Division Track Department Seniority Roster. (Organization's File 7DT-610; Carrier's File 81-19-203)
- (2) Claimant A. M. Donatell shall have his original seniority date (May 2, 1974) restored and compensated for all wage loss suffered.

OPINION OF BOARD:

After reviewing this record we are persuaded that this is not a disciplinary case to which Rule 19 of the Agreement applies. The facts are not in dispute and the case centers upon the interpretation, application and reconciliation of several rules of the Agreement, i.e., Rules 10, 13 and 16(a) reading as follows:

Rule 10

"Employees whose positions have been abolished or who have been displaced who desire to retain their seniority without displacing employees with less seniority must, within fifteen (15) calendar days, file their name and address with the Assistant Division Manager - Engineering and thereafter notify him in writing of any change in address. An employee who is absent on vacation or leave of absence when his job is abolished or he is displaced will have the same rights, provided such rights are exercised within ten calendar days of his return to active service."

* * *

Rule 13

"Employees whose positions have been abolished or who have been displaced will have the right to displace within ten (10) working days of the date their position was abolished or they were displaced. An employee who is absent on vacation or leave of absence when his job is abolished or he is displaced will have the same rights to displace, provided such rights are exercised within ten (10) calendar days of his return to active service. Junior employees cannot be displaced during course of a day's work."

* * *

Rule 16

"Employees assigned to positions on bulletins must take position assigned to within thirty (30) calendar days, unless prevented from doing so by illness, leave of absence or other good and sufficient reason."

Claimant entered service May 2, 1974 and was employed continuously thereafter as a Trackman. The record shows that in early August 1979 Claimant was working on the Itasca Yard Gang. On August 6, 1979 he was assigned to the position of Track Walker at Chetek, Wisconsin. Under the provisions of Rule 16(a) Claimant had the obligation and the right to report to the assignment as Track Walker within thirty (30) calendar days of assignment, i.e., on or before September 5, 1979, unless one of the conditions listed in Rule 16(a) prevented him from doing so. According to

unrefuted evidence he continued to work the Atasca Yard job until August 10, 1979 when, pursuant to his doctor's orders, he took the next three weeks off from work to undergo treatment for an illness. He did report to the Track Walker job at Chetek on September 4, 1979, as required by Rule 16(a), and was permitted to work that assignment commencing September 4, 1979.

However, under date of September 14, 1979 ADME N.H. Clark notified Claimant that during the 29 day period between his August 6, 1979 assignment to the Track Walker position and September 4, 1979 when he reported to the assignment he had been bumped by a senior employe named Dempsey Duncan.

Specifically, Duncan displaced Claimant effective August 14, 1979 but, after performing the Track Walker job for only ten (10) days, on August 24, 1979 Duncan accepted a temporary position to protect a Section Foreman's job at New Richmond, Wisconsin. Clark further notified Claimant that since he neither had filed a written notice within 15 calendar days pursuant to Rule 10 nor displaced a junior employe pursuant to Rule 13 within ten working days of August 14, 1979 when Duncan displaced him, Carrier considered him a brand new employe. Notwithstanding a written explanation by Claimant that he had been unaware of Duncan's displacement of him and a certification that he had been under doctor's care during the 29 day period between accepting and reporting to the Track Walker's job, Clark notified Claimant on October 3, 1979 as follows:

Mr. A. M. Donatell
Route No. 1
Sarona, Wisconsin 54870

This is in reference to your letter of September 18, 1979 and letter from James A. Rugowski, M.D., dated September 17, 1979 which were requested in my letter of September 14, 1979.

As you have not complied with Rule 10 or Rule 13 of the current agreement, it is my responsibility to declare that you have forfeited your seniority by not using your displacement rights or filing your rights.

As you were allowed to return to work as a Track Walker at Chetek, Wisconsin on September 4, 1979, I will allow you to retain a Trackman Seniority Date of September 4, 1979.


N. H. CLARK

/ Ass't. Division Manager-Engineering

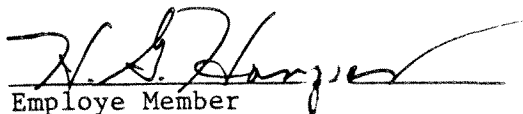
It is evident beyond doubt that Claimant did not know he had been displaced on August 14, 1979 nor is there any evidence to show that he could have or should have known that Duncan had displaced him and then moved on to another job all during the 30 day period which Rule 16(a) provides an employe to take a position he has been assigned to by bulletin. Carrier's local management was unrealistic and unreasonable in holding Claimant to a duty of acting upon the occurrence of an event he neither knew about nor reasonably could have been expected to know about. Moreover, the interpretation placed upon a relevant rule by the ADME would render nugatory the 30 day reporting time to which Claimant was entitled under the express language of Rule 16(a). A cardinal tenet of contract construction is that interpretations should be avoided which render solemnly negotiated contract language meaningless. It also is important that the Agreement be read as a

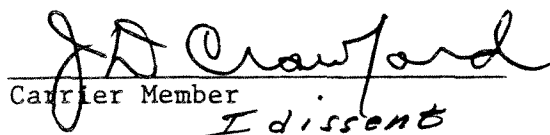
whole giving meaning wherever possible to all the language and reconciling inconsistencies or conflicts in various provisions on the basis of making all apply reasonably. Finally, we recognize the concept that the law abhors a forfeiture of rights like the five and one-half years of seniority which the ADME stripped away from Claimant. We conclude that the ADME erred and misconstrued the Agreement rules when he concluded that even before reporting for duty on the Track Walker's job Claimant had forfeited all his seniority rights by operation of Rules 10 and 13. In the absence of a showing that Claimant knew or should have known that Duncan had displaced him on August 14, 1979, the time requirements of Rules 10 and 13 must be considered tolled or superceded during the 30 day period granted by Rule 16(a). Based upon all the foregoing we shall sustain the claim for restoration of Claimant's original seniority date (May 2, 1974). However, we find in this record no proof of loss to support an award of monetary damages.

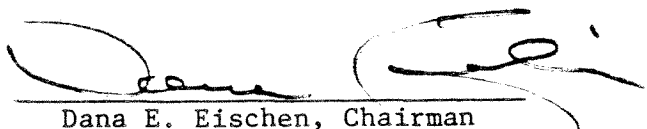
AWARD

Claim sustained to the extent indicated in this Opinion.

Carrier shall implement this Award within thirty (30) days of issuance.


Employee Member


Carrier Member
I dissent


Dana E. Eischen, Chairman


Date: March 30, 1983

CARRIER MEMBER'S DISSENT

The function of this Board is to interpret agreements, not to amend the agreement in a situation in which the Chairman considers that there is an incongruity between the rules. There is no conflict or inconsistency between the rules. Rule 16(a) specifically refers to "illness" as a reason for not reporting to a new assignment within thirty calendar days. Rules 10 and 13 refer to leave of absence, like Rule 16(a), but not illness as a sufficient reason for not complying with the time limit in those rules.

If the parties had intended that illness be included as an excuse for delay under Rules 10 and 13, they would have so provided. Whether he is ill or not the employee can comply with Rule 10 or 13. Rule 16(a) does not contemplate that the employee can cut himself off entirely from communication with his employer during the 30-day period for reporting; the delay was negotiated for the obvious purpose of permitting an employee who is working full-time to make arrangements to change his place of residence if necessary.

The interpretation of Rules 10 and 13 in this case makes the parties' omission of illness as a reason for delay meaningless. While the Chairman may abhor a forfeiture of seniority rights, the parties who negotiated Rules 10 and 13 do not; the Chairman has heard enough discipline cases involving absenteeism or tardiness that he should understand why the parties did not leave the door open to a recapture of seniority rights by a terminated employee on the basis of illness.



J. D. Crawford
Carrier Member