

PUBLIC LAW BOARD 1837

Case #20

(MW-CAN-77-1)

AWARD 20

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees
vs
Norfolk and Western Railway Company

STATEMENT OF CLAIM:

1. The Carrier violated the effective agreement dated April 1, 1951, when it removed Claimant Jerry Jackson's name from the seniority roster and closed his record.

2. Request that Claimant Jerry Jackson be reinstated with all seniority, vacation and all other rights unimpaired and that he be recalled to service in accordance with his seniority, and that he be paid for all monies loss suffered by him.

FINDINGS: This Board upon the whole record and all the evidence finds that:

The carrier and employee involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as amended.

OPINION:

This case involves the application of Rule 9 "Retention of Seniority in Force Reduction":

"(a) Employees laid off by reason of force reduction desiring to retain their seniority must file with their superior officer a written statement indicating their desire, and setting out their address. This statement must be filed within ten (10) days after being laid off. They must immediately notify their superior officer of any change of address. Employees failing to comply with these provisions or to return to service within ten (10) days for a regular bulletined position after having been notified

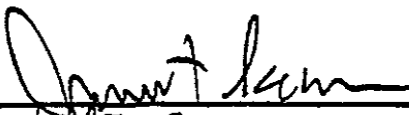
in writing by their superior officer will forfeit all seniority unless a leave of absence is obtained under the provisions of this agreement."

Claimant was laid off effective December 31, 1976. For reasons not fully developed on the record, it became apparent to the Organization at the beginning of February, 1977, that the Carrier no longer considered the Claimant to hold seniority rights, due to his alleged failure to comply with the ten-day reporting period required in Rule 9 (a). The Organization asserts that the Claimant met his reporting obligation by date of January 3, 1977; it further claims that the Carrier cannot require that such report of interest to remain active on the seniority roster be issued by certified or other accountable mail. As to the latter assertion, we concur, although the record does not indicate any specific demand upon a laid-off employee to post letters of interest in this matter. The point is that the burden rests upon the employee to be able to substantiate a claim that such a letter was, indeed, directed to the Carrier in a timely manner. It is the employee who stands to gain or lose by such action or inaction. While the Claimant may very well have issued the proper letter in the proper period, failure to be able to demonstrate a constructive effort was made to notify the Carrier -- whether by regular mail or otherwise -- inures

to his detriment. We appreciate the harshness of this provision, but we find no basis to conclude that the provision -- as written by the parties -- is subject to any other interpretation. We find no error in the Carrier's actions.

AWARD:

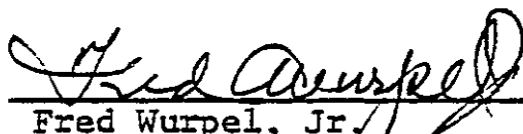
Claim is denied.



James F. Scearce
Neutral Member



G. C. Edwards
Carrier Member



Fred Wurlpel, Jr.
Organization Member

Dated this 28th day of April, 1980 at Atlanta Ga