

PUBLIC LAW BOARD 181

(MW-CGO-77-3)

Case No. 6

PARTIES TO DISPUTE:

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

STATEMENT OF CLAIM:

1. The carrier violated the effective working Agreement dated February 1, 1951, when it dismissed claimants Aaron Johnson and Freddie White on February 18, 1977.
2. The carrier reinstate the claimants with seniority and all other rights unimpaired, and they be compensated for all monies loss suffered by them.

FINDINGS:

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

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

OPINION:

Claimants were Laborers on the RF-3 Rail Gang in the Calumet Yard, Chicago, when, as of December 31, 1976, according to the Carrier, their positions were abolished. Under the terms of Rule 5(a), according to the Carrier, the Claimants were obliged to take formal, written action, indicating their availability and interest in recall:

"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 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 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.

No such letters were forthcoming and consequently they were considered to have forfeited their seniority and were not entitled to recall. According to the Organization, the Claimants never occupied a status as employees requiring their filing the notice of availability and interest heretofore cited. Per the Organization, they were "casual employees" who were called on a day-to-day basis and thus retained their rights for recall without the need for formal notice.

We take note of the self-executing nature of Rule 5(a) which does not make any specific reference to an employees status at time of layoff. We also are cognizant of the penalty aspect of this rule if an employee fails to comply or respond where a "regular bulletined position" is concerned, but we are unable to relate this aspect of the Rule to the Claimants' status at time of layoff. In that regard, while the Organization asserts that the Claimants' status was "casual" in nature, even if this was construed to be related to this case, there is no showing by the Organization on the record that the Claimants did, indeed, occupy such status.

While it may be that such lack of notice was merely an

oversight by the Claimants; we conclude that the Rule -- which was, after all, negotiated by the parties -- is, indeed, self-executing and the failure of the Claimants to comply compels this Board to leave the Carrier's actions to stand as implemented.

AWARD:

Claims are denied.

James F. Searce
James F. Searce
Neutral Member

G. C. Edwards
G. C. Edwards
Carrier Member

W. E. LaRue
W. E. LaRue
Organization Member

Dated this 12 day of Aug, 1980 at Atlanta, Ga.