

PUBLIC LAW BOARD NO. 1838

Award No. 73

Case No. 73

Carrier File MW-PO-82-3

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute Norfolk and Western Railway Company

Statement Claim on behalf of Ben Davis in which you protest his
of dismissal, which was a result of a formal investigation held
Claim on January 11, 1982, and in which you request his
reinstatement and pay for time lost.

Findings: The Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated March 1, 1976, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

The instant claim arose from the admitted failure of Claimant to exercise his displacement rights within the ten day period after having been furloughed due to a reduction in force from the X-7 work gang on November 25, 1981.

Claimant sought to explain his failure to exercise his seniority within the requisites of the rule by obliquely referring to family problems which prevented him from timely exercising his seniority rights. Rule 16-B of the applicable schedule in pertinent part reads:

"(b) When force reductions are made, positions are abolished, or displacements occur, employees affected, other than section laborers, shall, within ten days, exercise their seniority to positions to which their seniority entitles them. Employees other than section laborers shall exhaust all seniority rights before

being considered furloughed, and failing to do so, will forfeit all seniority established under provisions of this agreement, except as provided for in Section (b) of Rule 13, and Rule 19. Employees who are cut off or displaced and used for temporary service before asserting displacement rights, shall have ten days after being released from such temporary service in which to exercise seniority rights in accordance with provisions of this rule.

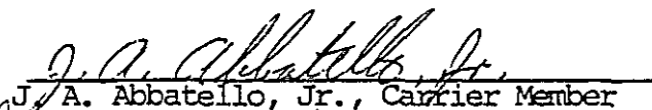
Section Laborers shall have the right to exercise seniority as such to other gangs, but will not be required to do so. When done, seniority must be exercised within ten days. Where it is not done, section laborers' status becomes that of furloughed employees. Employees cut off or displaced from positions in other Grades, Classes and Groups and who exercise displacement rights to section laborer positions must first exhaust seniority rights on the section where their rights as section laborer are carried before they will be permitted to exercise such rights to any other section on the Roadmaster's District.

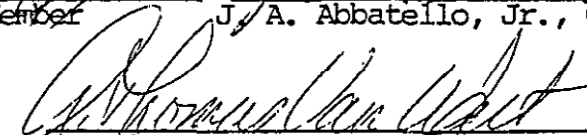
An employee exercising displacement rights under this rule must do so prior to the assigned quitting time of the employee being displaced and will be responsible for protecting the assignment selected on its next regular work day unless otherwise arranged under Rule 26."

The above cited rule is self-executing; Claimant freely admitted that he failed to make the timely exercise of his seniority. In view of Claimant's admission, and the language in the rule, the Board lacks jurisdiction to address the claim. Therefore the claim will be dismissed.

AWARD: Claim dismissed.


Bryce Hall, Carrier Member


J. A. Abbateello, Jr., Carrier Member


A. Thomas Van Wart, Chairman
and Neutral Member

Issued at Salem, New Jersey, March 2, 1984.