

PUBLIC LAW BOARD NO. 2206

AWARD NO. 49

CASE NO. 39

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employes

and

Burlington Northern, Inc.

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it failed to recall Section Laborer J.L. Spani to service on the Beardstown Seniority District. (System File 12-3 MW-32(a2) 9/11/78)
- (2) Section Laborer J.L. Spani be allowed pay for all time lost since June 21, 1978, until recalled to service in line with his seniority.

OPINION OF BOARD:

The present claim was initiated by the Organization for Claimant on August 15, 1978. Before the matter could be handled on the property, Claimant on September 15, 1978 filed with the Third Division, NRAB his own notice of intent to file a submission, reading as follows:

"After properly filing my name in accordance with Rule 9, in 1977, I am still waiting to be called back as of September 15, 1978. Since the first of 1978 union men lower in seniority have been hired. When I found out other men were working, I promptly contacted H. C. Crotty, President of Brotherhood of Maintenance of Way Employes. I stated that I was entitled to back pay for the time I was not working. The union submitted a claim with Burlington Northern [sic] for back pay on August 15, 1978. As of September 15, 1978 I have not been informed of any further action being taken by the union or the railroad."

The Third Division disposed of his submission in Award 3-22439 (without referee) on June 15, 1979, as follows:

"OPINION OF BOARD: Claimant was employed as a section laborer on March 30, 1977. On September 4, 1977, Claimant was laid off account reduction in force. Claimant contends that he filed proper notice under Rule 9 of the Parties' Agreement to retain seniority and advise of recall when the forces would be increased. In mid 1978, Claimant learned that forces had been increased and a claim submitted to Carrier account their failure to recall Claimant to service in accordance with his seniority standing. The instant claim was filed with the Board September 15, 1978 seeking back pay from June 21, 1978 until the claim is settled. There is no request for reinstatement of seniority by Claimant. On the other hand, Carrier in response to claim filed on the property covering said violation declined claim account Claimant's failure to file name and address as required by Rule 9 of the Parties' Agreement. Carrier further contends that certain procedural and jurisdictional errors appear in the instant claim, including Claimant's premature filing of this claim with the Third Division, while the claim instituted on the property was still being progressed in accordance with provisions of the Parties' Agreement.

"It is quite obvious from a review of the instant claim that on the date that Notice of Intention was filed with this Division, the primary claim was in the appeal stage of handling on the property and the instant claim as set forth has not met the requirements of Section 3, First (i) of the Railway Labor Act, Circular No. 1 of the National Railroad Adjustment Board, nor Rule 42 of the Parties' Agreement.

"Given the undisputed fact that these requirements have not been fulfilled in this claim, we have no choice but to dismiss the claim for lack of jurisdiction."

Thereafter, the Organization continued to press this claim on the property and appealed it to us for determination.

We find that the prior dismissal of the premature appeal by Claimant is not fatal to our own jurisdiction and the Organization properly has perfected the claim for handling by this Board. Nor do we find persuasive Carrier's arguments that the original claim was not timely filed. However, it is plain beyond debate that the claim has no merit and must be denied. Claimant failed utterly in September 1977 to comply with the registration requirements of Rule 9, which reads as follows:

**"RULE 9. RETENTION OF SENIORITY BY  
LAID OFF EMPLOYES**

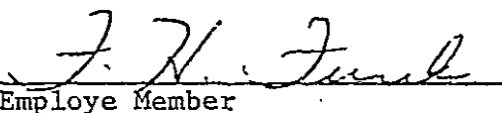
"When an employe laid off by reason of force reduction reduction desires to retain his seniority rights, he must within ten (10) calendar days of date so affected, file his name and address in writing on the form supplied for that purpose, with his foreman or supervisor with copy to General Chairman, receipt of which will be acknowledged in writing by the Company. He must advise in writing of any subsequent change of address, receipt of which will be similarly acknowledged. When new positions of more than thirty (30) calendar days' duration are established, or when vacancies of more than thirty (30) calendar days' duration occur, employes who have complied with this rule will be called back to service in order of their seniority. Failure to file his name and address or failure to return to service within ten (10) calendar days, unless prevented by sickness, or unless satisfactory reason is given for not doing so, will result in loss of all seniority rights. If he returns to service and has complied with the provision sof this rule, his seniority will be cumulative during the period of absence. This rule does not apply to employes who have been out of service twenty-four (24) months or more, unless they had no opportunity to work on their seniority district during this period."  
(Emphasis added)

Under the self-actuating provisions of Rule 9, Claimant lost all seniority rights when he failed to file his name and address within ten (10) days of his layoff in September 1977. His belated attempt to file in June 1978 is without force and effect. The claim must be denied.

AWARD

Claim denied.

  
Carrier Member

  
Employee Member

  
Dana E. Eischen, Chairman

Date: 10/7/78