

PUBLIC LAW BOARD NO. 2960

AWARD NO. 98
CASE NO. 132

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees
and
Chicago & North Western Transportation Company

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it improperly closed the service record of Trackman J. B. Chavez. (Organization File 3T-3849; Carrier File 81-84-31).
- (2) The claim presented by Vice Chairman K. L. Bushman dated June 28, 1983 to Assistant Division Manager-Engineering, J. C. Donski, is allowable because said claim was not disallowed by Assistant Division Manager-Engineering Donski in accordance with Rule 21.
- (3) Because of (1) and/or (2) above, Trackman J. B. Chavez shall have his name placed on the appropriate seniority roster with his August 21, 1980 seniority date.

OPINION OF THE BOARD

This Board, upon the whole record and all of the evidence, finds and holds that the Employee and Carrier involved in this dispute are respectively Employee and Carrier within the meaning of the Railway Labor Act, as amended, and that the Board has jurisdiction over the dispute involved herein.

The facts are essentially undisputed. The Claimant, J. B. Chavez, had established seniority as a Trackman on the Illinois Division on August 21, 1980. He was furloughed in October of that year and properly filed his name and address. On April 24, 1981, the Carrier sent a forced recall notice of the Claimant, but sent it to the wrong address. The Claimant's address on file with the Carrier was 305 Southview Drive, Rochelle, Illinois. The letter was sent to 350 Southview Drive. When the Claimant failed to respond or return to service, the Carrier closed out the Claimant's service record pursuant to Rule 14(a), which states:

"Employees who have filed their name and address in accordance with Rule 10 will be notified in seniority order as their services are needed for bulletined positions for which no applications are received and, when so notified, must return to service within ten (10) calendar days unless prevented by illness or excused by proper authority or forfeit their seniority. A letter or telegram to the employee at his last address filed will constitute proper notice."

It is also noted that seniority rosters were posted in March of 1982 and 1983 without the Claimant's name appearing. It is also undisputed that no protest was filed in 1982.

On June 28, 1983, the Vice Chairman filed the following claim:

"This letter is being filed in behalf of Mr. J. B. Chavez.

"Mr. Chavez was employed by the Chicago and North Western Transportation Company on the Illinois Division on August 21, 1980. In October of 1980 Mr. Chavez was furloughed and filed his name and address in accordance with Rule 10 of the effective Agreement. On April 24, 1981 the Illinois Division issued a forced recall to Mr. Chavez. Mr. Chavez never received the forced recall do (sic) to it being sent to an incorrect address and therefore had no knowledge that he was to report for work. If you check Mr. Chavez's file you will find that the recall notice was sent to 350 Southview Drive, Rochelle, Illinois and the address on file was 305 Southview Drive, Rochelle, Illinois.

"It is apparent that Mr. Chavez could not report for work when the recall letter was sent to the wrong address.

"It is the claim of the Brotherhood that Mr. Chavez be reinstated on the Seniority Roster with his August 21, 1980 seniority date."

Under the date of August 26, 1983, the Assistant Division Manager replied. However, in his appeal to the Division Manager the General Chairman stated among other things:

"In addition to the merit of this claim, Mr. Donski made a procedural default in answering this claim. Vice Chairman Bushman's claim was written on June 28, 1983. Mr. Donski's denial is dated August 26, 1983. However, the envelope the letter was mailed in shows the letter was not mailed until August 29, 1983, or 62 days after the claim was filed."

Based on this, he claimed a violation of the time limits occurred.

The Union, in addition to the time limit argument, directs attention to the Carrier's admission that the recall notice was sent to the wrong address. Accordingly, they believe, that the Carrier has admittedly violated Rule 14 of the Agreement and as such, the claim should be sustained.

The Carrier contends that the Claimant received proper notice that he was recalled from furlough, and failed to either return to service or provide the Carrier with an excuse for not returning. Consequently, ten days after notice, the Claimant was properly dropped from the seniority roster in accordance with Rule 14(a). While acknowledging that the letter was sent to the wrong address, they contend there is no evidence that the Claimant did not receive the letter. On the contrary there is, in their opinion, reason to believe that he did receive the notice. For instance, they note that the letter was not returned to the Carrier as undeliverable,

and it is unlikely that a letter addressed to the Claimant at a different street number on the same block would not get to him. They suggest the Board take judicial notice that the 1980 census figures show that Rochelle had a population of 8,982, living in 3,341 households. Accordingly, they maintain the Board should reasonably infer that the Claimant received the notice.

With respect to the Organization's time limit contention, they point out that Mr. Bushman's letter was received by the Carrier on June 30, 1983. Thus, even though the Carrier avers that the claim was denied on August 26, 1983, they assert a denial mailed on August 29, 1983, would be on the 60th day following the receipt of the claim. This then, would be in compliance with the time limit rule. In addition, they also raise a time limit argument of sorts. They note when the rosters were posted in March of 1982 and 1983, and did not contain the Claimant's name, no protest was filed until June 28, 1983, beyond the 90-day period specified in Rule 9. Under the provisions of that rule, a protest cannot be considered at this date.

In consideration of the competing contentions, the Board believes it most appropriate to consider the case in a chronological context. In this respect, the contract was violated in the first instance when the Carrier failed to send the Claimant's recall notice to his address on file. Rule 14(a) denotes a proper notice as such, not an address different from the one on file. It is undisputed that the letter of recall was not, as the Rule

requires, sent to "his last address filed." In view that proper notice as required by the Rule was not given, the Carrier's removal of the Claimant from the seniority roster was improper.

In view of the foregoing, it is not necessary to consider the later time limit issues. With respect to the Carrier's Rule 9 contentions, the Board is not convinced, based on this record, that it was intended to apply to the instant set of facts and circumstances. Rule 9 appears to apply to errors in dating and cannot, in this case, be construed to operate as a waiver to the basic right of employment through recall.

AWARD:

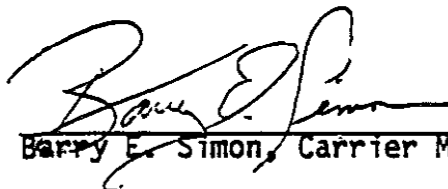
In view of the foregoing, the claim is sustained.



Gil Vernon, Chairman



H. G. Harper, Employee Member



Barry E. Simon, Carrier Member

Dated: June 17, 1985