

PUBLIC LAW BOARD NO. 3460

Award No. 50

Case No. 50

PARTIES
TO
DISPUTE

Brotherhood of Maintenance of Way Employees
and
Burlington Northern Railway Company

STATEMENT
OF CLAIM

- "1. That Carrier violated the effective agreement February 12, 1981, and each date thereafter for failing to provide Sectionman Frank A. Dean with a list of junior employees he could displace and failure to provide Form 15364 so Claimant Dean could file his name and address in accordance with applicable rules.
2. Sectionman Frank A. Dean shall be paid eight hours straight-time rate of pay commencing February 12, 1981, for each day withheld from service, holiday pay and overtime at the applicable sectionman rate of pay that his seniority would have allowed him to work."

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

Claimant, a section laborer, was recalled to service from layoff on February 5, 1981, and worked for seven days until February 12, 1981, when he was displaced by a senior employee exercising seniority. According to claimant, he approached his foreman on February 12 to secure a Form 15364 for the purpose of refiling his name and address under the provisions of Rule 9. The foreman indicated, however, that claimant was to exercise his seniority if possible, or file the appropriate form, within ten days, and that he should contact the roadmaster's office in Sioux Falls. The form was not provided by the foreman on the date requested, nor was there a list of junior employees made available to claimant, according to his version of the incident. The record indicates that on February

20 claimant came to the Sioux Falls office of the roadmaster and was observed at that time in the office but made no effort to obtain a force reduction form and left without making of his intentions known. On February 23, 1981, claimant came to the roadmaster's office to request a force reduction form to fill out. He was informed at that time that, since he had not exercised his seniority or filed the form within ten days, he had lost his seniority rights under the self-executing provision of Rule 9 of the agreement which provides:

"...Failure to file his name and address or failure to return to service within ten calendar days, unless prevented by sickness, or unless satisfactory reason is given for not doing so, will result in loss of all seniority rights."

Petitioner argues that Claimant Dean was not returned to a position that would continue for thirty calendar days and, therefore, was first not compelled to file again a Form 15364 since his position only lasted seven days. Furthermore, there is no dispute, according to petitioner, that Carrier did not make available the appropriate form to claimant at Sioux Falls on February 12, 1981, the date on which he was displaced. Petitioner insists that it is the Company's obligation to provide the appropriate force reduction form at the location at which the need arises, otherwise it is in violation of its obligations under Rule 9. It is noted, incidentally, by petitioner that the foreman never denied that he failed to supply the requested form to claimant on the date of the displacement.

As in previous disputes, Carrier in this matter also argues that petitioner was dilatory in progressing the instant claim to a public law board and, therefore, it should be dismissed on the basis of the doctrine of laches. With respect to the merits, Carrier states that the claimant did not exercise his seniority by displacing a junior employee and, therefore, was clearly governed by the self-executing requirements of Rule 9. Since he admittedly did not file his name and address with Carrier on the form provided for that purpose, he lost his seniority rights and has no right to be recalled to service. Carrier notes further that the agreement places squarely upon the employee the burden of filing the appropriate form in the event of his displacement or layoff. Since the form was clearly available, it was the claimant's obligation to obtain and file it in timely fashion if he wished to retain his seniority.

The issue of laches raised by Carrier has been raised in a number of cases before

this Board. As in the prior cases, the Board does not find that the dispute herein may be disposed of by the invocation of the doctrine. It is simply not dispositive of the issue herein. Petitioner argues, among other things, that Carrier violated Rule 8d. The Board finds, however, that that rule is irrelevant to this dispute since it is applicable only under a force reduction circumstance or when positions are abolished. In the instant case, claimant's position was neither abolished nor were forces reduced. He was simply displaced by a senior employee.

With respect to the application of Rule 9, Carrier's interpretation of that rule is correct. It was indeed his responsibility to file the appropriate form with Carrier in order to retain his seniority. The record is clear in two significant respects concerning his obligation in the instant case. First, it is apparent that there were no forms made available to petitioner when he requested same from his foreman on the day of his displacement. Second, he was indeed in the office of the roadmaster, where the forms were available, several days later, well within the the time frame permitted under Rule 9, and made no attempt to secure the form. Petitioner's argument that the form was not offered to him at that time is irrelevant and unrelated to his obligation.

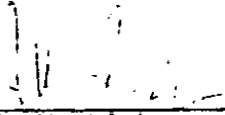
Based upon the facts indicated above, it is clear that this case is not the usual situation involving a violation of Rule 9 and the subsequent loss of seniority. Carrier is, in part at least, culpable in this situation since the appropriate form should have been available at the time and at the place of claimant's displacement. It was not. Upon this fact, there is no dispute. At the same time, however, claimant, who was reasonably familiar with the layoff procedure, having filed this form in the past, was far from diligent in fulfilling his obligations under the particular circumstances. He was in the office on the 20th of the month, well within the ten-day frame, and made no attempt to secure the form and file it. For the reasons indicated, therefore, the claim must be sustained, at least in part. Under the peculiar circumstances of this particular dispute, claimant shall be reinstated to his former position with all rights unimpaired. However, since he was at least partly responsible for the late completion of the required form, he shall receive no pay for time lost.

AWARD

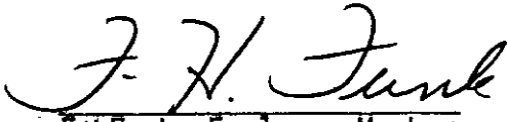
Claim sustained in part; claimant shall be reinstated to his former position with all rights unimpaired but shall receive no pay for time lost.

ORDER

Carrier will comply with the award herein within thirty (30) days from the date hereof.


I. M. Lieberman, Neutral-Chairman


W. Hodynsky, Carrier Member


E. H. Funk, Employee Member

St. Paul, Minnesota
August 1986