

PUBLIC LAW BOARD NO. 3530

Award No. 7
Case No. 7

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM:

Extra Force Laborer, J.D. Cooke, Rt. 5, Box 1122-A, Boren Road, Wheelersburg, Ohio 45694 was dismissed for allegedly failing to exercise his seniority within the 10-day period. Employees request he be reinstated with full pay and all rights unimpaired.

FINDINGS

By letter dated August 5, 1982, Claimant was notified that he was being released from his position of Extra Force Laborer effective 4:00 p.m., August 13, 1982. On August 25, 1982, Claimant was notified that he had forfeited all seniority rights since he had failed to exercise his seniority within ten days of August 13, 1982.

The Organization requested and was granted an investigation in order to determine the circumstances surrounding Claimant's dismissal. On the basis of evidence adduced at the investigation, Carrier decided to affirm Claimant's dismissal. The Organization filed a claim on November 2, 1982, protesting Carrier's action and requesting that Claimant be reinstated with full pay and all rights unimpaired. The Claim was denied at all levels of appeal on the property,

and the Organization then submitted the matter to this Public Law Board for resolution.

The issue to be decided in this dispute is whether Claimant was dismissed for just cause, and if not, what should the remedy be.

Rule 16 of the Agreement states that employees released due to force reduction must exercise their seniority within ten days in order to avoid forfeiting all seniority. The Organization does not dispute this interpretation of Rule 16; rather, it is argued that mitigating circumstances rendered Claimant's dismissal harsh, excessive and arbitrary.

The Organization's submission states that Claimant was unable to find out from Carrier whether he had ten calendar days or ten working days in which to exercise his seniority. However, no explanation is offered as to why, if Claimant was unsure about the time limit within which to act, he chose not to exercise his seniority within the shorter period. It is argued further that Claimant was having car trouble and that his wife was sick and in the hospital on several occasions. It is not stated, however, how these circumstances prevented Claimant from exercising his seniority. In addition, Claimant testified at the investigation that he was in the office "on this first day that I was cut off, on a Monday." He testified further that at that time he knew he had to exercise his seniority. Roadmaster T.A. Keyes testified that Claimant was in the office on August 13 and August 20, 1982, and that on neither occasion did Claimant choose to exercise his seniority. The record thus shows that Claimant knew he needed to exercise his seniority, that he had at least one opportunity to do so, and that he failed to take the required action.

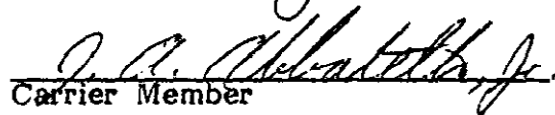
As stated by Carrier, Rule 16 is self-executing. Absent a finding that Claimant was prevented, through no fault of his own, from exercising his seniority within the prescribed ten-day limit, this Board may not hold that Claimant's dismissal was not for proper cause, or that it was harsh, excessive, or arbitrary. Accordingly, the claim must be denied.

AWARD

Claim denied.



Neutral Member



Carrier Member



Organization Member

Date: 4/27/84