

PUBLIC LAW BOARD NO. 4104

Case No. 87

PARTIES TO DISPUTE: Brotherhood of Maintenance of
Way Employees
vs.
Burlington Northern Railroad

STATEMENT OF CLAIM: Claim of the System Committee of the
Brotherhood that:

1. The Carrier violated the Agreement when it improperly
closed the service records of Sectionman R.E. Diegel.

2. The Claimant shall be reinstated and restored to his
position as Sectionman and all other rights as such unimpaired and
he shall be compensated for all wage loss suffered retroactive
sixty (60) days from the date of the initial claim.

OPINION OF BOARD: Claimant, R.E. Diegel, was employed as an
Assistant Foreman with a seniority date of April 5, 1976. Claimant
requested and received a forty-nine (49) day leave of absence from
August 11, 1986 through October 8, 1986. During that time,
Claimant's region gang and position was abolished September 19,
1986. Claimant subsequently filed a Rule 9 recall slip for recall
to service with the Denver Region Engineering Department. On June
24, 1987 Claimant was notified by Division Superintendent Zimmerman
that he was being deleted from the District #8 Seniority District
for his failure to file a recall notice in accordance with Rule 9.

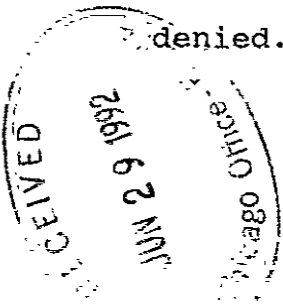
On July 8, 1987 the Organization filed a claim on Claimant's
behalf. Carrier timely denied the claim. Thereafter, the claim
was handled in the usual manner on the property. It is now before
this Board for adjudication.

The Organization contends that Claimant complied with the
terms of Rule 9 when he filed his recall form on October 8, 1986
with Chief Engineer J. Wood at the Denver office. It argues that

although Carrier contends that Claimant should have filed his Rule 9 recall with the Lincoln office, there is nothing in the Agreement to support that position. The Organization asserts that Rule 9 provides that the employee will file his name and address with his foreman or supervisor, and that Claimant complied with such requirements.

The Organization maintains that Claimant was working on seniority District #9 when he requested the leave of absence, and when he returned from the leave he attempted to exercise his seniority through the Denver office. As such, it avers that Claimant believed he was properly on furlough status from October 8, 1986 to June 24, 1987 when he was advised that his seniority was terminated. The Organization maintains that Claimant properly filed the recall notice and he should not be held responsible for the lack of communication between the two offices. For the foregoing reasons, it asks that the claim be sustained.

Carrier, on the other hand, maintains that Claimant forfeited his seniority when he failed to file the recall notice with the Division Superintendent. It asserts that Claimant has, in the past, consistently and properly filed his recall forms with the Lincoln Division Office when furloughed. Accordingly, Carrier concludes that Claimant was familiar with the procedures to be followed in accordance with Rule 9. It maintains that the language contained within Rule 9 is clear and unambiguous and must be applied consistently. Accordingly, Carrier asks that the claim be denied.



Upon a review of the record evidence, we conclude that Carrier's action was proper under the requirements specified in the Agreement. Rule 9 imposes a burden upon the Claimant to timely file the recall notice with the appropriate office. Claimant failed to properly follow the procedure. As a ten-year employee who has been involved in recall on previous occasions, Claimant can not plead ignorance as to the application of Rule 9. Under the express provisions of Rule 9, Claimant therefore forfeited his seniority. In the Carrier submission, it was noted that during the on-property handling of this case, efforts were made to resolve the matter. Claimant was offered a recall to service on April 22, 1988 with reinstatement to the appropriate seniority roster. However, Claimant did not respond to the April 22, 1988 recall to service. Although offers discussed during handling of the claim on the property are not binding on the Board, such declination by Claimant must be taken into consideration. We therefore conclude that since the record clearly demonstrates that Claimant did not abide by the provisions of the Rule, the claim must be denied.

FINDINGS: The Public Law Board No. 4104 upon the whole record and all of the evidence, finds and holds:

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act as approved June 21, 1934;

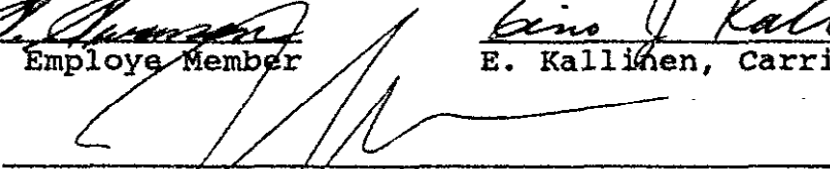
That the Public Law Board No. 4104 has the jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD: Claim denied.


P. Swanson, Employee Member


E. Kallinen, Carrier Member


Martin F. Scheinman, Esq., Neutral Member

6/18/92