



LABOR RELATIONS DEPARTMENT

Parties
to the
Dispute

BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYES

vs.

NATIONAL RAILROAD PASSENGER
CORPORATION

Case No. 2

STATEMENT OF CLAIM

In its submission, the Organization indicated that its claim is as follows:

Claim of the Brotherhood (NEC-BMWE-SD-1482) that:

(a) The Carrier has violated the current MW Agreement, particularly Rule 18, when it terminated the seniority of Trackman James Owens on the Northeast Corridor Northern Seniority District.

(b) Claimant Owens shall have all seniority restored without loss of compensation and shall have restored all privileges and benefits he enjoyed prior to his termination.

Carrier maintains that a claim was not advanced properly in accordance with Rule 64.

OPINION OF THE BOARD

By letter dated May 19, 1986, Carrier notified Claimant that it had invoked Rule 18 (which it considers to be a self-implementing Rule) and

was terminating him from service. Rule 18 deals with Reduction in Force--Retaining Rank on Roster and mandates in Section (d) that "An employe who fails to comply with the provisions of paragraphs (b) and (c) of this Rule will forfeit his seniority and his name will be removed from the seniority roster." Specifically, Carrier maintains that Claimant failed to either exercise seniority or file furlough within ten days from the date of being displaced.

Carrier raises numerous objections on procedural grounds concerning the Grievant's alleged failure to file a claim in accordance with Rule 64 or to indicate a remedy sought. While this Board agrees with Carrier that there were defects in the handling of the claim on the property, the threshold question here is whether there was justification for Claimant's failure to meet the ten-day deadline specified in Rule 18 and, if not, whether Carrier was justified in taking the position that Claimant has invoked the termination of his employment.

The Organization contends that Claimant should not be held to the ten-day limitation since "May 18, 1986, was a Sunday and no one would be available in the Supervisor's office nor the Division Engineer's office." This Board does not find this argument persuasive. Inevitably, there will be at least one Sunday in any ten-day period. Had the parties intended that employees be given ten working days in which to respond rather than ten calendar days, they could have and should have so indicated in their Agreement. Here, we find the following Award to be particularly on point:

