

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4370

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

BURLINGTON NORTHERN RAILROAD COMPANY

AWARD NO. 60

Case No. 60

STATEMENT OF CLAIM

1. The Carrier violated the provisions of the current Agreement when it removed Trackman A. A. Angarin's seniority for the Colorado and Southern seniority roster (this resulted in his dismissal from service) on May 22, 1995.

2. The Carrier will now be required to return Claimant to service with all seniority and other rights unimpaired and compensated for all wage loss suffered as a result of the Carrier's action in the removal of his seniority.

F I N D I N G S

By certified mail dated April 17, 1995, the Claimant was advised to return to service from furlough on April 18, 1995. The notice advised him of the requirement of Rule 9, Retention of Seniority by Laid Off Employees, which states in pertinent part as follows:

. . . failure to return to service within ten (10) calendar days, unless prevented by sickness, or unless satisfactory reason is given for not doing so, will result in loss of all seniority rights.

By notice dated May 22, 1995, more than a month after the recall to service, the Claimant was notified that his seniority had been "deleted from the . . . roster".

The Organization contends the Carrier improperly deprived the Claimant of his seniority (and thus of his employment rights), since Rule 9 provides for exceptions to the requirement to report within 10 calendar days.

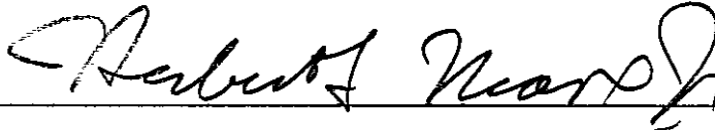
The Claimant reported that he had telephoned a Carrier representative to advise concerning difficulties with operation of his truck. The problem with this is that the call or calls were made on April 24-25, 1995, which was already beyond the 10-day reporting period. Further, the Carrier representative reported, without contradiction, that he had returned the telephone call but was unable to reach the Claimant.

The Claimant produced, also belatedly, a physician's letter dated April 27, 1995, requesting on behalf of the Claimant an "an additional week of leave from his work" for a "family medical emergency". No details were provided in the request and, in any event, it offered no explanation for the Claimant's failure to report to duty in timely fashion.

These circumstances do not meet the requirements for exception to Rule 9. The Rule is self-executing, and there is no basis to alter the result. With this resolution, there is no need for discussion of the Carrier's procedural argument as to alleged failure, denied by the Organization, to advise concerning its non-acceptance of the appeal reply.

Claim denied.

A W A R D

A handwritten signature in cursive script, reading "Herbert L. Marx, Jr.", is written over a horizontal line.

HERBERT L. MARX, Jr., Neutral Referee

NEW YORK, NY

DATED: November 4, 1996