

AWARD NO. 31

PUBLIC LAW BOARD NO. 4823

**STATEMENT OF CLAIM:**

"We cannot agree with the Division Manager's decision to terminate the Claimant's Seniority and Employment under Rule 3 (c), since he was on Temporary Leave and was unaware that his position had either been abolished, and or he was displaced by a Senior Employee. The Claimant had requested a Leave of Absence in conjunction with his vacation in April of 1990, which was apparently not made part of his record, thus his Employment was terminated without the right to challenge the Division Manager's decision. Even if the Carrier could produce evidence that the Claimant failed to displace as set forth in Rule 3 (c) (which they did not). The discipline issued is excessive in proportion to the alleged violation of the Agreement between the Carrier and the Organization. We cannot agree that the Carrier complied with Rule 13 or Appendix No. 11 as amended July 16, 1984."

On January 4, 1991, Mr. Broxterman replied to the General Chairman's aforementioned letter, in pertinent part, as follows:

"Your claim is improper and barred under the provision of Rule 14 for the reason it was not presented in the first instance to Regional Manager Shalin within 60 days from the date of the occurrence on which the claim is based. The claim is based on the action taken in Mr. Shalin's letter to Claimant Dahlke dated June 12, 1990. Approximately 182 days had elapsed from the date of Mr. Shalin's letter (June 12) to the date your claim was initially and improperly submitted to this office (December 11, 1990) which is well beyond the time limit.

Without prejudice to the foregoing, according to the information furnished me, Claimant Dahlke observed his vacation from April 30 through May 18, 1990. On May 3, 1990 (while the claimant was on vacation), he was displaced from his foreman's position by a senior employee who exercised displacement rights under the agreement. On Friday, May 18, 1990, the claimant was advised of the displacement and that he, in turn, would have to exercise his seniority by making a displacement. Claimant requested and was granted a 10 day leave of absent (sic.) which was handled verbally. He was advised that the leave of absence would expired (sic.) on May 31, 1990, on which day he should get in touch with the office to make his displacement. Claimant did not call the office after his leave of absence expired; nor did he exercise his seniority by making a displacement. In fact, to this day, the claimant has not been in touch with the Carrier.

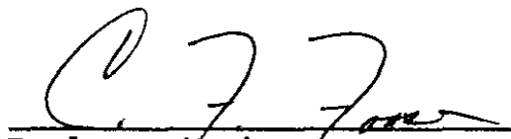
Rule 3-(c) of the agreement is a clear, unambiguous and self-executing rule. An employee's failure to comply therewith provides for an automatic loss of seniority.

"Numerous awards of the NRAB as well as PLB awards on this property support the Carrier's position."

It is not necessary for the Board to address the Carrier's contentions as to the alleged violations of the Time Limit Rule, inasmuch as the Board finds, based on the evidence before it, that the claimant's seniority and employment were properly terminated under the provisions of Rule 2(c).

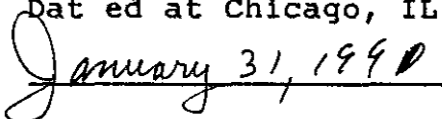
AWARD: Claim denied.

  
G. Michael Garmon, Chairman

  
Employee Member

  
Carrier Member

Dated at Chicago, IL:

  
January 31, 1990