

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 5564

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES)	
)	Case No. 10
and)	
)	Award No. 8
NORTHEAST ILLINOIS REGIONAL COMMUTER)	
RAILROAD CORPORATION)	

Martin H. Malin, Chairman & Neutral Member
R. C. Robinson, Employee Member
J. E. Butler, Carrier Member

Hearing Date: November 17, 1997

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier improperly closed the service record of employee M. Ewing (System File C-18-96-F020-01-M/08-13-247).
2. As a consequence of the violation referred to in Part (1) above, the Claimant shall be returned to service with seniority and all other rights unimpaired.

FINDINGS:

Public Law Board No. 5564, upon the whole record and all the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute herein; and, that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

On December 23, 1995, Claimant was furloughed. On January 31, 1996, Claimant was notified that his seniority had been terminated pursuant to Rule 9 (G), which provides, in relevant part:

- (1) When employees are furloughed by reasons of force reduction and desire to retain their seniority rights, they must file their name and address in writing on the form provided by the Carrier not later than ten (10) calendar days from date cut off. This notice from the employee must be sent in triplicate to the Carrier official extending the

notice of force reduction and a copy of this notice must be sent to the General Chairman at the same time. The officer receiving said notice shall date, sign and return one copy each to the employee and the General Chairman. Periodic renewal of address is not thereafter required, but it is the responsibility of the employee to advise promptly in similar manner of any change in address.

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(3) Failure to comply with Paragraphs (1) and (2) of this Section will cause automatic forfeiture of seniority and employment relationship with the Carrier.

The Organization contends that Claimant filed his name and address on December 26, 1995, well within the ten day period. Carrier disputes this, contending that Claimant failed to file.

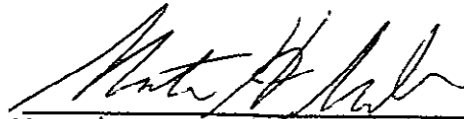
The Board has reviewed the record carefully. The record contains a statement from Claimant that he came to the Blue Island District Office on December 26, 1995, to pick up his paycheck and completed the form and gave it to the receptionist. All other evidence in the record is to the contrary.

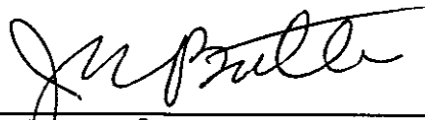
First, Rule 9 provides that the employee should have the form signed by the relevant Carrier official and obtain a copy in return. Claimant admittedly did not have a copy signed by the relevant official and returned to him. Second, Rule 9 requires that the form be filed simultaneously with the General Chairman. It appears that Claimant never filed the form with the General Chairman, yet if Claimant really had filed the form at Blue Island on December 26, we would expect him to have simultaneously sent it to the General Chairman. Third, the relevant Carrier official never received Claimant's form. Finally, Claimant's credibility was damaged severely because on January 30, 1996, he attempted to get two Carrier employees to backdate a form for him.

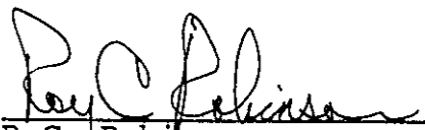
Considering the record as a whole, we must find that Claimant failed to file his name and address on December 26, 1995, or on any other date within the required time period. This is not a case like Award No. 6, where there were substantial mitigating factors. We see no reason not to apply Rule 9 to the instant case.

AWARD

Claim denied.


Martin H. Malin, Chairman


J.E. Butler,
Carrier Member


R.C. Robinson
Employee Member

Dated at Chicago, Illinois, December 23, 1997.