

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6302

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES)
and) Case No. 134
UNION PACIFIC RAILROAD COMPANY) Award No. 122
_____)

Martin H. Malin, Chairman & Neutral Member
T. W. Kreke, Employee Member
D. A. Ring, Carrier Member

Hearing Date: February 7, 2008

STATEMENT OF CLAIM:

- (1) The Agreement was violated when the Carrier improperly terminated the seniority of Mr. C. Williams while he was under medical restriction from performing normal work activities and following an April 8, 2004 recall to a sectionman position on Gang 4832 (System File C-0423-101/1405484).
- (2) As a consequence of the violation referred to in Part (1) above, Mr. C. Williams shall be allowed to report to the named position he was recalled to with all seniority restored to him unimpaired and that he be compensated for all lost wages he should have received from May 14, 2004, had he been allowed to place himself on his assigned position on Gang 4832, continuing until the violation of our Collective Bargaining Agreement as described in this claim ceases.

FINDINGS:

Public Law Board No. 6302 upon the whole record and all of 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.

Claimant was furloughed on November 28, 2003. By letter dated April 8, 2004, addressed to Claimant's last address of record, Carrier recalled Claimant to service. Because Claimant had failed to notify Carrier of a change of address, the letter was returned to Carrier unclaimed. On April 26, 2004, Carrier terminated Claimant's seniority for failing recall.

The record reflects that beginning in January 2004, Claimant was under a doctor's care

for a hernia repair. Complications arising from a fall early in his recovery from surgery prolonged Claimant's recovery period and he was not released by his doctor until May 12, 2004. On May 14, 2004, Claimant inquired into the status of bids he had placed on May 6, 2004, in anticipation of returning to service, and was advised that his seniority was terminated on April 26 for failing recall.

At issue in the instant case is the relationship between Agreement Rules 21(f) and 23(d). Rule 21(f), relied on by Carrier, provides:

Employees who do not elect to remain in service through the exercise of displacement rights or who are unable to do so will be furloughed. In order to be eligible for recall and in order to avoid any forfeiture of seniority under recall provisions, employees must have on file at all times a current address with the Director of Non-Op Personnel Services in Omaha, Nebraska. In conjunction with the January 1st seniority information letter transmitted to each employee retaining seniority on the Maintenance of Way rosters, employees will be asked to advise of any change in their current mailing address. Advice of any change in address must be transmitted via U.S. Mail within ten days of the charge to. . . .

All notices of recall will be transmitted to the last address of record. Employees failing to respond to recall letters transmitted via certified mail to the last address of record will be subject to the seniority forfeiture provisions of the Agreement.

Rule 23(d), relied on by the Organization, provides:

The forfeiture of seniority requirements of (b) and (c) will not be applied if satisfactory reason for not reporting in a timely fashion is given, or an extension of the time limit specified in (a) is agreed to by the designated Carrier Officer and General Chairman involved. Satisfactory reason for failing to report has reference to sickness or other reasons over which the employee has no control.

The issue is whether Rule 23(d) effectively provides an exemption from Rule 21(f)'s requirement of timely notice of a change of address by furloughed employees. We hold that in this case it does not. There is no indication in the record that Claimant's medical condition made it impossible for him to notify Carrier of his change in address. He simply neglected to do so. Had Claimant notified Carrier of his new address, the recall notice would have come to him and he would have been in a position to take advantage of Rule 23(d) and obtain an extension of the recall time limit. Had Carrier refused such an extension, Rule 23(d) would have aided Claimant in pursuing a claim. However, Claimant's failure to update his address short circuited Rule 23(d) from operating. We find that Rule 21(f) controls the instant case and that Claimant forfeited his seniority when, because he neglected his obligation to keep his address current, he failed recall.

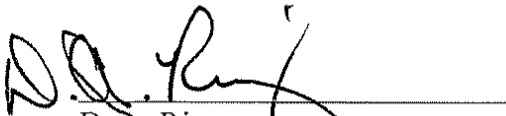
We note that Carrier has also urged that the claim be dismissed as untimely. Because we deny the claim on its merits, we see no need to reach the timeliness argument.

AWARD

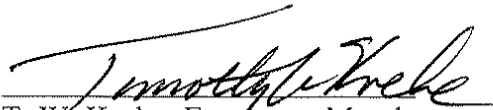
Claim denied.



Martin H. Malin, Chairman



D. A. Ring
Carrier Member



T. W. Kreke, Employee Member
Employee Member

June 6, 2008
Dated at Chicago, Illinois, May 31, 2008