

NATIONAL MEDIATION
BOARD

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NATIONAL RAILROAD
ADJUSTMENT BOARD

NATIONAL MEDIATION BOARD

SPECIAL BOARD OF ADJUSTMENT NO. 1011

TRANSPORTATION*COMMUNICATIONS INTERNATIONAL UNION

and

CONSOLIDATED RAIL CORPORATION

AWARD NO. 78

Case No. 78
Docket No. CR-4206

STATEMENT OF CLAIM

(a) The Consolidated Rail Corporation violated the rules of the Agreement effective July 1, 1979, particularly Rule 5, among other rules, when on September 23, 1987, a certified letter of recall was sent erroneously to Mr. H. F. Hittenrauch, resulting in the subsequent forfeiture of his seniority and employment rights with the Carrer.

(b) The Consolidated Rail Corporation shall be required to allow Mr. Hittenrauch eight (8) hours at the appropriate rate of pay for each and every day commencing October 5, 1987, that he was deprived of working until the date he was eventually restored to active employment with full seniority rights.

(c) This claim has been presented in accordance with the provisions of Rule 45 of the Agreement and should be allowed.

F I N D I N G S

Claimant holds seniority date of April 14, 1975. He was furloughed in 1981, at which time he had on file a

Carrier form which designated his home address. On September 27, 1987 he was sent a recall letter by certified mail. The letter was returned "unclaimed". It had been addressed to 2220 N. High St., Columbus, the address on file at the time furlough commenced.

On October 5, 1987, the Claimant was sent a letter stating that because of his failure to report, he had "forfeited [his] seniority and employment relationship". This letter, however, was sent to 460 E. Norwich Ave., Columbus.

The Carrier acted on the provisions of Rule 5 (e), which reads as follows:

(e) When a permanent position is awarded to a qualified furloughed employee and it does not require a change in residence, he shall be recalled by certified mail to his home address. An employee failing to report for duty within ten (10) calendar days after such notice was mailed, except under circumstances beyond his control, shall forfeit all seniority.

When the Claimant learned that a junior employee had been recalled to service, he initiated a claim commencing October 5, 1987 for failure to receive proper notice of recall. During the claim handling procedure the Carrier agreed on December 15, 1987 to restore the Claimant to service with seniority unimpaired but without back pay to October 5. The claim for back pay is the subject of this dispute.

The Claimant stated he had orally advised the Carrier of a change of address to the E. Norwich Ave. address shortly after his furlough commenced and produced vacation pay on W-2 forms sent by the Carrier shortly thereafter to the new address.

The Carrier defends its position by stating that the Claimant had failed to submit a Form G 2101 RT, Change in Name And/Or Address, and thus the Carrier should not be held liable for the Claimant's failure to receive the recall notice.

The Board finds that Rule 5 (e) does not specify the method of notice to the Carrier. There is no indication that the Claimant was advised that use of this form was essential. That the Carrier did receive notice of the change can be reasonably presumed, based on the revised address for the vacation pay and W-2 forms. Under these circumstances, the Claimant cannot be found at fault.

A W A R D

Claim sustained. The Carrier is directed to put this Award into effect within thirty (30) days of the date of this Award.


HERBERT L. MARX, JR., Chairman and Neutral Member


J. R. JENKINS, Employee Member


J. H. BURTON, Carrier Member

NEW YORK, NY

DATED: JUL 02 1991