

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 924  
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES  
and  
CHICAGO & NORTH WESTERN TRANSPORTATION COMPANY

Case No. 202

Award No. 177

STATEMENT OF CLAIM: Claim of the System Committee of the  
Brotherhood that:

1. The Carrier violated the Agreement when it improperly terminated the seniority of D. B. Duncan (Organization File 9KB-4779T; Carrier File 81-91-126).
2. The Carrier shall now reinstate Mr. Duncan with his April 15, 1989 seniority date with all other rights unimpaired and compensate him for all lost time commencing May 2, 1991 and continuing.

FINDINGS:

The Claimant, who had been furloughed, bid and was awarded an advertised position with a starting date of April 1, 1991. However, since the Claimant was not medically qualified, he was not able to start until April 15, 1991 at which time he did not report for duty. The Carrier contends that the Claimant forfeited his rights to that position. Under Rule 10 of the Agreement, the Claimant had 15 days to file a rights retainer to protect his seniority. On May 1, 1991, the Carrier terminated the Claimant in accordance with the Agreement. On May 2, 1991, the Claimant filed a rights retainer. The Organization filed a claim on behalf of the Claimant contending that the Carrier "refused to accept the written notification from the Claimant".

The parties being unable to resolve the issue, this matter came before this Board.

This Board has reviewed the record in this case and we find that there is sufficient evidence in the record to support the finding that the Claimant failed to timely protect his rights and subjected himself to a termination of his seniority. Therefore, the claim must be denied.

The record reveals that the Claimant bid a bulletined position dated March 5, 1991. Claimant was awarded the job on March 22, 1991, but the Claimant was not medically qualified to start work on April 1, 1991, which was the effective starting date for the position. The record also reveals that on April 15, 1991, the Claimant was medically qualified to begin work at the new position but he did not report to it. He attempted to bump into another position. Claimant never took up service in the position that he had originally bid on, and since he did not file a rights retainer within fifteen days from the date that he was first able to start work in that position, his seniority was terminated by the Carrier effective May 1, 1991. The Claimant filed his rights retainer on May 2, 1991.

Rule 10(a) states the following:

Employees whose positions have been abolished or who have been displaced who desire to retain their seniority without displacing employees with less seniority must, within fifteen (15) calendar days, file their name and address with the Assistant Division Manager-Engineering and thereafter notify him in writing of any change in address.

Rule 16(a) states the following:

...employees assigned to positions on bulletins must take position assigned to within ten (10) calendar days, unless prevented from doing so by illness, leave of absence or other good and sufficient reason or shall forfeit rights to that position. Employees will be

released to assume positions assigned within ten (10) calendar days.

As stated above, the record reveals that the Claimant was assigned and medically qualified to resume service with the Carrier on April 15, 1991. The record is also clear that he never took up service on the position because he was interested in another job. Rule 16 states that employees assigned to a position must take that position within 10 days or forfeit their rights to that position.

The parties have apparantly also agreed that:

...the time limits for filing rights retainer prior to loss of seniority are fifteen (15) days from the date the Carrier is notified by the employee that he or she is refusing the position, or fifteen (15) days from the tenth day after the assignment is made, whichever comes first.

In the case at hand, the effective date of the assignment was April 1, 1991. Since the Claimant was not in a condition to return to work, his date of assignment was held in abeyance so that his tenth day become operative on April 15, 1991. His fifteen days under Rule 10 began to run effective April 15, 1991. Since he filed his rights retainer on May 2, 1991, he had already lost his seniority because the conditions of Rule 10 had become operative.

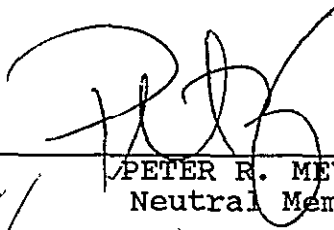
It is unfortunate that when the Claimant decided that he did not want to take the job that he had bid on and been awarded, he did not immediately file his rights retainer--or at least file it within the next fifteen days. The parties have agreed that the Carrier has a right to terminate an employee's seniority if he does not abide by the rights retainer rules. Since the Claimant

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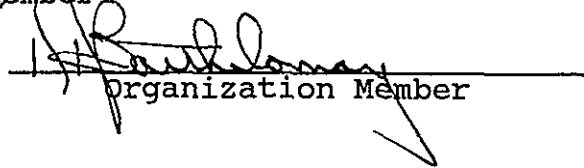
did not act as required to protect his rights, the claim must be denied.

AWARD:

Claim denied.

  
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PETER R. MEYERS  
Neutral Member

  
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Joan M. Harrems  
Carrier Member

  
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H. Rauldman  
Organization Member

Dated: January 27, 1994