

SPECIAL BOARD OF ADJUSTMENT NO. 924

Award No. 35
Docket No. 44

PARTIES: Brotherhood of Maintenance of Way Employees

TO :

DISPUTE: Chicago and North Western Transportation Company.

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

- (1) The Carrier violated the Agreement when it terminated M. Townsend's seniority. (Organization File 9T-4497; Carrier File 81-84-156).
- (2) Claimant M. Townsend shall be reinstated with seniority and all other rights unimpaired and compensated for all wage loss suffered."

FINDINGS:

This Board, upon the whole record and all the evidence, finds and holds that the employee and the carrier involved, are respectively employee and Carrier within the meaning of the Railway Labor Act as amended, and that the Board has jurisdiction over the dispute herein.

The record shows that claimant was furloughed as a trackman on November 7, 1982. At the time there were no positions to which he could exercise his seniority

Rule 10 of the applicable Agreement provides:

"Rule 10 - Retention of Seniority

"Employee 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. An employee who is absent on vacation or leave of absence when his job is abolished or he is displaced will have the same rights, provided such rights are exercised within ten calendar days of his return to active service.

"Employees complying with this Rule will continue to accumulate seniority during the period they are furloughed."

The Organization states that when claimant was in the office of the Assistant Division Manager-Engineering on February 6, 1984, in connection with a matter not involved herein, he inquired about the possibility of recall in 1984 and was informed that he had been terminated for not filing a rights retainer. The Organization contends that claimant did file his name and address within the fifteen (15) day time limit provided in Rule 10, and also contends that Carrier did not notify claimant of his termination until some sixteen months after his furlough.

The Carrier contends that claimant did not file his name and address with the Assistant Division Manager-Engineering within fifteen calendar days of November 7, 1982, and was accordingly removed from the seniority roster as required by Rule 10. The Carrier also points out that claimant's name did not appear on the March 1, 1983, seniority roster and such omission from the roster was not protested.

The Board finds that Rule 10 of the Agreement is clear and unambiguous and its provisions are self-executing. Employees who do not comply with the rule do not retain seniority. The Board can only apply the Agreement as written. There is no provision in the rule requiring the Carrier to notify an employee when he has failed to comply with the rule. While the contention is made that claimant did file his name and address within the fifteen (15) day time limit, there is no evidence in the record as to when claimant did so.

Based upon the record, the Board can only find that the termination of claimant's seniority was proper under Rule 10. See Award No. 20 of Public Law Board No. 2960 involving the same parties.

A W A R D

Claim denied:

Paul C. Carter
Chairman, Neutral Member

J. D. Crawford
Carrier Member

H. A. Harper
Labor Member

Dated: April 16, 1985