

SPECIAL BOARD OF ADJUSTMENT NO. 924

Award No. 63
Docket No. 93

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 removed the name P.J. Metoyer from all seniority rosters. [Organization File 9KB-4008T; Carrier File 81-85-83]
- (2) Claimant P.J. Metoyer shall have his name restored to the proper seniority rosters, reinstated with 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 employees and the Carrier involved are respectively employees and Carrier within the meaning of the Railway Labor Act as amended, and that the Board has jurisdiction over the dispute herein.

On October 28, 1984, the position that Claimant held on the Suburban Division Rail Gang was abolished. At the time, Claimant was serving a suspension, though he had actual notice that the position was to be abolished. Claimant neither exercised his right to displace a junior employee nor filed a rights retainer to protect his seniority by the January 15, 1985, deadline. Carrier then closed Claimant's service record and removed him from the seniority roster.

Claim was made for Claimant's reinstatement with pay for time lost. The claim was timely filed and properly handled at all stages. Rule 13 of the Agreement provides, in part:

Employees whose positions have been abolished or who have been displaced will have the right to displace employees with less seniority providing they do so within ten (10) working days of the date their position was abolished or they were displaced. 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 to displace, provided such rights are exercised within ten (10) calendar days of his return to active service. Junior employees cannot be displaced during course of a day's work.

Rule 10 of the Agreement provides:

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. 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 (10) calendar days of his return to active service.

The Organization contends that on the date that Claimant's position was abolished, Claimant was serving a suspension. During that suspension, Claimant became disabled and was hospitalized. As a result of his disability, Claimant was unable to file his address in compliance with Rule 10 until January 14, 1985. As of this date, Claimant also picked up a paycheck and left a change of address notice with the ADM-E's office in compliance with Rule 10. The Organization asserts that this is the reason that Carrier did not receive any requests from Claimant after January 15, 1985.

The Carrier asserts that the obligations of an employee whose position has been abolished historically have been strictly interpreted. The governing rules do not provide for time extensions as a result of discipline. An extension of the period within which to file a rights retainer is granted only if the employee is on vacation or a leave of absence; Claimant was on neither one. The Claimant forfeited his seniority by not taking action within the time limit prescribed in Rules 10 and 13.

This Board has reviewed all of the evidence in this case, and it finds that on October 28, 1984, the position held by the Claimant was abolished. The Claimant was, at that time, serving a suspension, which commenced on October 4, 1984. By January 15, 1985, the Claimant had neither exercised his right to displace a junior employee nor filed a rights retainer to protect his seniority. Consequently, the Claimant was sent a letter by the Carrier advising him that he had been removed from the seniority roster.

The record is clear that the obligations upon an employee whose job has been abolished have been strictly interpreted by the Carrier. Rule 13 grants an employee who is absent or on vacation or on a leave of absence when his job is abolished ten calendar days from his date of return to active service to exercise his rights. When the Claimant's job was abolished, he was neither on vacation nor on a leave of absence. The rule does not provide for an extension as a result of discipline. The Claimant did not timely file to protect his rights. In Award 20 of Public Law Board 2960, it was held:

Unfortunate as it is, the Claimant's failure to comply with the unambiguous provisions of the contract mandates that he cannot retain seniority. Our function

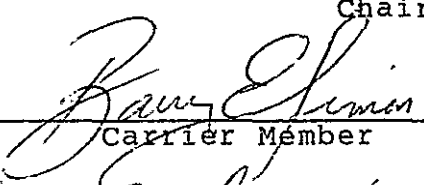
is not to do equity but to apply the contract as written.

Similarly, in this case, although equity might require something different, the contract language is clear, and the failure of the Claimant to assert his rights is also clear. This Board must abide by the agreement between the parties.

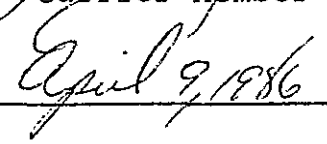
AWARD:

Claim denied.


Chairman, Neutral Member


Carrier Member


Labor Member

Date: 
April 9, 1986