

AWARD NO. 48
CASE NO. 48

Special Board of Adjustment No. 956

PARTIES
TO
DISPUTE:

Brotherhood of Maintenance of Way Employees
and
New Jersey Transit Rail Operations, Inc.

STATEMENT
OF
CLAIM

Claim of the Brotherhood:

The Claimant, M. Williams, did not violate the provisions of Rule 4, Section 2, Part (b), and forfeited his seniority, and therefore, the Claimant shall be returned to service with seniority rights unimpaired and made whole for any loss of pay or benefits.

FINDINGS

On May 23, 1986, the Claimant was disqualified from his position and was given the option to exercise his seniority to Gang 23 in Paterson, New Jersey, as a trackman. The Claimant failed to physically exercise his seniority by not reporting to Gang 23 within ten (10) days as required by Rule 4, Section 2(b). On June 3, 1986, Engineer of Track J. Savarese sent the Claimant a letter to inform him of his failure to physically exercise his seniority. This letter further informed the Claimant that his seniority had been forfeited and that he was terminated from service with the Carrier for failure to exercise his seniority as provided by Rule 4, Section 2(b).

On July 8, 1986, a continuous time claim in the name of the Claimant was sent to Mr. Savarese for time lost due to the Carrier's assignment of the Claimant to Gang 23 in Paterson. This time claim was denied by Mr. Savarese in a letter dated July 16, 1986. The Organization then appealed the Claimant's termination to the Manager and then Director of Labor Relations, where it was denied at both levels.

The Carrier maintains that it acted properly in this case. The record shows that the Claimant was disqualified from his previous position and was given the opportunity to exercise his seniority to another gang. The Claimant did not physically exercise his seniority within ten (10) days, in violation of Rule 4, Section 2(b). Rule 4, Section 2(b) is a self-executing rule, and by his own actions, the Claimant terminated his employment.

The Organization argues that the Claimant should have been allowed to displace back to his old position in accordance with Rule 3, Section 5. This contention lacks merit. The Claimant was disqualified from his old position because he lacked the necessary qualifications for the job. Having been disqualified, the Claimant's next step would be to exercise his seniority to a position for which he was qualified. This opportunity was extended to the Claimant. The Claimant, by his own volition, chose not to exercise his seniority as provided by Rule 4, Section 2(b).

Rule 4, Section 2(b), as its terms expressly indicate, is a self-executing provision that calls for forfeiture of all seniority. This

Board has no authority to modify the language that both parties have agreed to in this Rule.

AWARD: Claim denied.

Adopted at Newark, New Jersey, January 10, 1989.


Harold M. Weston, Chairman


Carrier Member


Employee Member