

NATIONAL MEDIATION BOARD
SPECIAL BOARD OF ADJUSTMENT NO. 1016

John C. Fletcher, Chairman & Neutral Member
Mark J. Schappaugh, Employee Member
Jeffrey H. Burton, Carrier Member

BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYEES

and

CONSOLIDATED RAIL CORPORATION

Award No. 90

Date of Hearing - February 21, 1995
Date of Award - June 30, 1995

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier improperly terminated the seniority of Trackman C. T. Bussard effective July 14, 1992. (System Docket Mw-2969).

2. As a consequence of the violation referred to in Part (1) above:

" ... it is necessary to request all seniority held by the claimant prior to the July 14, 1992 letter be restored. Furthermore, all time earned by junior man R. D. Battaglia must be claimed. All lost benefits and credits normally due must also be allowed. ***"

FINDINGS:

Special Board of Adjustment No. 1016, upon the whole record and all of the evidence, finds and holds that the Employee(s) and the Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the disputes(s) herein; and, that the parties to the dispute(s) were given due notice of the hearing thereon and did participate therein.

Claimant, a furloughed Trackman, was notified by certified letter, dated June 19, 1992, to return to work. Claimant failed to respond to the recall notice. On July 14, 1992, Claimant was notified that he had forfeited all seniority because he did not accept recall. Almost a year later, on June 9, 1993, the Organization instituted a claim contending, *inter alia*, that Claimant had been wrongly removed from all seniority rosters, in that he had been furloughed from Work Zone 4, but Carrier had issued a recall notice for a position in Work Zone 2. It argues that it had 60 days from the date it became aware of this defect within which to file a claim to correct the situation. Further, it suggests that Claimant was subjected to disparate treatment, in that he was not afforded

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the same consideration as others when roster defects were discovered and corrected.

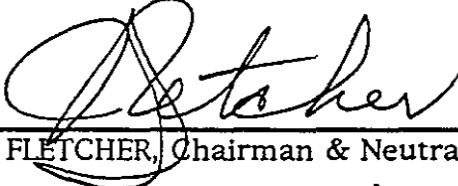
Before this Board Carrier defends against the claim on both procedural and substantive grounds. It notes that after Claimant received his recall letter he "did nothing to protect his rights." And even if it were true, which Carrier does not admit, that Claimant was the victim of an erroneous recall letter, he had an overriding obligation to contact Carrier in an attempt to resolve the error. Further, it notes the Claim before this Board was not timely filed under Rule 26(a). It contends that the Organization had 60 days from the date of the seniority forfeiture letter, within which to file a claim, but did not do so until almost a year later.

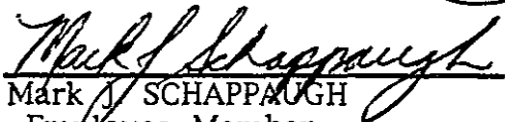
The Board finds that Carrier's procedural arguments have merit. Claimant was notified on July 14, 1992 that he forfeited his seniority. A copy of this notice was sent to the Organization. Neither Claimant nor the Organization did anything further about the forfeiture until the Organization instituted what it termed "a roster protest" nearly a year later. Rule 26 requires that claims be presented within 60 days of the date of occurrence. The date of occurrence in this matter was the date Claimant received the July 14, 1992 seniority forfeiture letter.

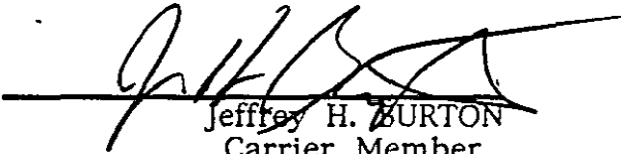
The claim must be dismissed as untimely.

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Claim dismissed.


John C. FLETCHER, Chairman & Neutral Member


Mark J. SCHAPPAUGH
Employee Member


Jeffrey H. BURTON
Carrier Member

Dated at Mount Prospect, Illinois, June 30, 1995