

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 924

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
CHICAGO & NORTH WESTERN TRANSPORTATION COMPANY

Case No. 171 AWARD 152

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. M. Broehm on December 28, 1988 (Organization File 7LF-2294 T; Carrier File 81-89-65).
2. Claimant D. M. Broehm shall now have his seniority restored and be compensated for all wages lost as a result of his termination.

FINDINGS:

Claimant D. M. Broehm was working in the Carrier's service on a Maintenance of Way Gang, Structures Department.

On February 27, 1989, the Organization filed a claim on behalf of the Claimant alleging that the Carrier improperly terminated the Claimant's seniority even though the Claimant had completed a Rights Retainer on November 23, 1988, in compliance with Rule 10, in the event his position was abolished while being on a medically disqualified leave from service, effective November 14, 1988, as a result of a job-related injury the Claimant sustained on November 8, 1988. The Carrier asserts that the Claimant's position was still in existence at the time he filed the Rights Retainer on November 23, 1988, and therefore that retainer was rejected. The Carrier contends that when it abolished the Claimant's position on November 30, 1988, the Claimant should have then filed a Rights Retainer, as well as a

request for a leave of absence, and failed to properly do so. The Carrier thereafter terminated the Claimant's seniority on December 28, 1988. On March 16, 1989, the Claimant obtained a settlement from the Carrier on the injury he sustained on November 8, 1988, and signed a Release; however, the Claimant's seniority remains at issue. This matter then came before this Board.

First of all, with respect to the Release, although it contains a clause which sets forth general language releasing ". . . any and all claims while in the employ of said Company, up to and including the date of this Release," it is clear that that Release relates solely to the personal injuries suffered on the job by the Claimant on November 8, 1988. The form is classified "FELA" and contains language which states, "I have read this Release and understand that I can make no further claims against the Company, even though my injuries are more serious or different than I now know or understand them to be." The document definitely relates to the injuries suffered by the Claimant, and this Board finds that the Claimant did not release the instant claim by executing the FELA Release on March 16, 1989.

The record reveals that the Claimant was injured on November 8, 1988, and was removed from service by the Carrier on November 14, 1988. Claimant knew his gang was going to be abolished in the near future since it always is around that time of the year because it is seasonal. Consequently, on November 23, 1988, he filed his Rights Retainer as required by Rule 10. The gang was

abolished on November 30, 1988.

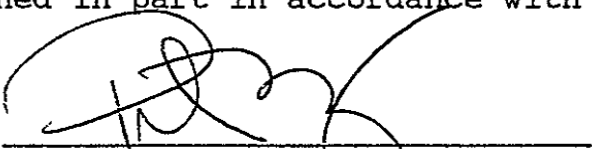
Rule 10 (a) provides:

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 calendar days, file their name and address with the Assistant Division Manager - Engineering and thereafter notify him in writing of any change in address.

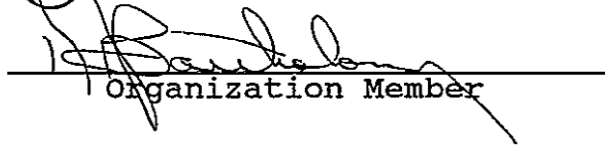
This Board has thoroughly reviewed the record in this case, and we find that although the Claimant did not technically comply with the provisions of the agreement, he made it known to the Carrier that he intended to protect his seniority. Consequently, the claim will be sustained in part. The Claimant shall be reinstated to service with seniority, but with no back pay. This decision is limited to the facts of this case and shall not be used as precedent for any other case.

AWARD:

Claim sustained in part in accordance with the findings.


PETER R. MEYERS
Neutral Member


Carrier Member


Organization Member

Date: 8-19-91