

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13154
Docket No. 13022
97-2-95-2-45

The Second Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

(International Brotherhood of Electrical Workers
(System Council No. 16
PARTIES TO DISPUTE: (
(Burlington Northern Railroad

STATEMENT OF CLAIM:

- “1. That in violation of the governing Agreement, Rules 15 and 30 in particular, when the Carrier improperly imposed Rule 15(c) and considered Crewman M.J. Thomas automatically out of service, and;
2. Accordingly, the Burlington Northern Railroad Company should be ordered to restore all rights, benefits and privileges to Crewman M.J. Thomas that he would be entitled had he not been considered out of service.”

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

At issue in this case is Carrier's application of Rule 15 of the Agreement. That Rule reads in pertinent part as follows:

- "(a) Except for physical disability, leave of absence in excess of ninety (90) days in any twelve (12) month period shall not be granted unless by agreement between the Management and the duly accredited representatives of the employees.**
- (b) The arbitrary refusal of a reasonable amount of leave of absence to employees when they can be spared, or failure to handle promptly cases involving sickness or business matters of serious importance to the employees, is an improper practice and may be handled as unjust treatment under these rules.**
- (c) An employee who fails to report for duty at the expiration of leave of absence shall be considered out of the service, except that when failure to report on time is the result of unavoidable delay, the leave will be extended to include such delay.**

*** * * ***

The facts in this case are not in dispute. By letter of June 7, 1993, Claimant requested a leave of absence from June 14, 1993, through September 13, 1993 to attend college. The request was granted by the Director of Telecommunications. On August 17, 1993, Claimant requested an extension of that leave through January 4, 1994. That request was also granted. On January 4, 1994, at approximately 3:00 P.M. Claimant left a voice mail message for his Supervisor advising that he would be coming by the Supervisor's office to leave a letter requesting another extension of his leave of absence. The letter in question was received by the Supervisor via company mail on January 11, 1994. On that same date Carrier notified Claimant that, since he had not returned from his leave of absence, he was considered to be out of service.

The Organization filed a claim contending that Claimant should be granted a Continued Educational Leave of Absence or, at a minimum, be afforded an Investigatory Hearing, during which he would have an opportunity to "tell his side of the story." In its response to the claim Carrier noted that Claimant clearly understood his obligation to request extensions in a timely manner. It pointed out that Claimant had stated as

much in his August 17, 1993, letter. Further, the Carrier asserted that, had Claimant made a timely request, the volume of work at his location was such that his request, nonetheless, would have been denied.

The Organization has offered no evidence on this record to suggest that there were extenuating circumstances which prevented Claimant from filing his request in a timely manner. Claimant's lassitude in this respect precluded any consultation between the Carrier and Management regarding his request, as provided by Rule 15(a). Moreover, Carrier has pointed out without successful contradiction that, had Claimant made his request for an extension of his leave, that request would have been denied because of the volume of work at his assigned location.

Rule 15 (c) is self-executing. Claimant failed to report for duty after his leave had expired and did not provide the Carrier with any extenuating circumstances which prevented him from doing so. Accordingly, Carrier was not obliged to provide Claimant with an Investigatory Hearing. Nor did Carrier violate the Agreement when it removed Claimant from the seniority roster and considering him to be out of service.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 8th day of September 1997.