

The Second Division consisted of the regular members and in addition Referee Thomas F. Carey when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
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(Burlington Northern Railroad Company

STATEMENT OF CLAIM:

1. That the Burlington Northern Railroad did violate the controlling Agreement, Rule 16 in particular, when it arbitrarily removed Electrician Gary Morris from service and removed his name from the seniority roster following his failure to report for duty at the expiration of a leave of absence.

2. That the Burlington Northern Railroad did continue to withhold Electrician Gary Morris from service even after his entering into a Burlington Northern Counseling Program, complying with all requests and/or requirements to learn to cope with his alcohol and gambling illness, and earning the Burlington Northern's Counselor's recommendation that he be returned to service.

3. That accordingly, the Burlington Northern Railroad be instructed to return Electrician Gary Morris to its service with full reinstatement of seniority; lost vacation time; holidays; sick pay; and/or hospitalization benefits to which he may be entitled under schedules, Agreements, rules or law. Claim also includes eight (8) hours' compensation at pro-rata rate beginning March 12, 1986, and continuing each work day thereafter until Electrician Morris is returned to 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 employe or employes involved in this dispute are respectively carrier and employes 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 waived right of appearance at hearing thereon.

On February 11, 1985, the Claimant wrote to his Shop Superintendent, requesting a 30-day leave of absence; on February 13, 1985, he increased the request to a 5-month leave of absence. The Shop Superintendent granted the 30-day leave of absence from February 20 to March 22, 1985.

The Claimant failed to return to work on March 22, 1985. The Shop Superintendent wrote to him on March 25, 1985, extending the leave to March 29, 1985, and advising him that if he did not report for duty or advise why he was unable to report by March 29, 1985, he would be closed out of service. On March 28, 1985, the Claimant telephoned the Shop Coordinator regarding his paycheck, and advised the Coordinator that he would be returning to work on April 1, 1985.

The Claimant failed to return to work on April 1, 1985, and was notified by letter that he had been removed from service by the Carrier, effective that date, for violating Rule 16, which reads in pertinent part:

"(c) An employee who fails to report for duty at the expiration of a leave of absence shall be considered out of the service, except that when the failure to report on time is the result of unavoidable delay, the leave will be extended to include such delay.

(d) In cases of illness of employees, their names will be continued on the seniority roster."

The Claimant did not respond to that letter, nor did he contact the Carrier in any other manner. He did, however, enter the Carrier's EAP in January or February of 1986 for counseling. On March 4, 1986, the Claimant's Employee Assistant Coordinator and his General Chairman on March 17, 1986, wrote to the Carrier requesting leniency for the Claimant, based on those problems, and asking that he be conditionally reinstated to service. However, the Carrier informed the Claimant that it was not willing to do so.

From the evidence presented before this Board, it is clear that the Claimant was repeatedly asked for documentation of his lengthy absence, and repeatedly failed to furnish it--despite numerous warnings of the consequences of his actions. Further, the current rationale for the Claimant's behavior--that he was addicted to alcohol and gambling--was not raised at the time of the infraction, although it may have been pertinent. The Claimant's reluctance to furnish the required documentation to the Carrier, and his failure to contact the Carrier to explain why he did not appear for work on April 1, were serious offenses which resulted in his surrender of all rights pertaining to his employment relationship, including his seniority (see Third Division Awards 24769, 22327; Second Division Award 8894).

Given the evidence before us, the Board has no alternative but to apply the Agreement as written and to deny the Claim. Further, the Board does not possess jurisdiction to modify the discipline imposed in this case based on leniency, alone. Leniency is granted at the sole discretion of the Carrier, and we may not review the Carrier's decision to deny it (see Second Division Awards 8572, 10538).

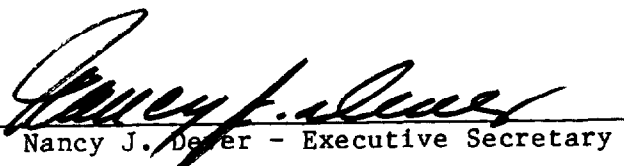
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Award No. 11687
Docket No. 11354
89-2-86-2-170

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: 
Nancy J. Deaver - Executive Secretary

Dated at Chicago, Illinois, this 22nd day of March 1989.