

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 11780
Docket No. 11600
89-2-88-2-84

The Second Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Firemen and Oilers
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(Chicago and Northwestern Transportation Company

STATEMENT OF CLAIM:

1. That in violation of the current Agreement the name of Mr. P. Luckett, Laborer, Chicago, Illinois, was improperly removed from the seniority roster, while he was on a medical leave of absence. Upon recovery from his injuries, he was not allowed to return to service.

2. That, accordingly the Chicago and Northwestern Transportation Company be ordered to restore the Claimant to service and compensate the Claimant for all time lost commencing November 30, 1987 and continuing until he is placed back in service with his correct seniority standing.

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 employees 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.

The Claim of the Organization is that the Carrier violated the Agreement when they removed Claimant from the Seniority Roster on October 15, 1986. The Organization argues that Claimant had suffered an on-the-job injury of which the Carrier was well aware. It is the Organization's position that Claimant's removal and subsequent deletion from the 1987 Seniority Roster violated Rule 24 of the Agreement.

The Carrier argues that Claimant was injured on July 30, 1986, and failed to return to work or to obtain a leave of absence. Letters were sent to the Claimant and returned unclaimed. The Carrier further argues that there was no violation of Agreement Rule 24 in that the Seniority Roster was posted January 5, 1987 and no protest was received within sixty (60) days.

This Board has carefully reviewed the merits of the instant case. Although many facts are contested, the following is supported by the record. Claimant was injured July 30, 1986 and the Carrier was aware of that injury. Carrier sent letters to the Claimant notifying him to return to work or obtain a leave of absence. By certified letter dated October 15, 1986, Claimant was informed that his employment was terminated. On October 16, 1986, the Carrier received Claimant's "Application for Leave of Absence" with physician signed "Authorization for Absence." On January 5, 1987 the next year's Seniority Roster was posted with the Claimant's name deleted. By letter dated December 7, 1987, the Organization filed the initial Claim for Carrier reinstatement of the Claimant.

In the whole of this case, there is no evidence that Claimant initiated any action to protect his employment. He did not contact the Carrier prior to October 16, 1986. Whatever problem he may have had, Claimant failed to follow the Agreement and obtain a timely leave of absence. In addition, no action was forthcoming for nearly fourteen (14) months after his employment was terminated. Consequently, we must deny the claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dexter - Executive Secretary

Dated at Chicago, Illinois, this 25th day of October 1989.