

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13494

Docket No. 13410

00-2-99-2-5

The Second Division consisted of the regular members and in addition Referee Robert L. Hicks when award was rendered.

(International Association of Machinists and Aerospace
Workers

PARTIES TO DISPUTE: (

(The Burlington Northern and Santa Fe Railway Company
(former Atchison, Topeka and Santa Fe Railway)

STATEMENT OF CLAIM:

“That the Atchison, Topeka and Santa Fe Railway Company (hereinafter referred to as the “Carrier”) violated Rule 40 of the Controlling Agreement, Form 2642-A Std., as amended, between the Atchison, Topeka and Santa Fe Railway Company and its Employees represented by the International Association of Machinists and Aerospace Workers (hereinafter referred to as the “Organization”) when it wrongfully and unjustly dismissed Kansas City, Kansas Machinist Gary L. Murray (hereinafter referred to as the “Claimant”) for allegedly being absent without proper authority.

Accordingly, we request that for this improper discipline, he be compensated for all lost time and benefits as provided for in Rule 40(I) of the Controlling Agreement, as amended. Additionally, we request that all records and reference to this matter be removed from his personal record.”

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.

On September 19, 1985, the Carrier entered into an Agreement with the Organization which reads, in pertinent part, as follows:

“In connection with the application of Rule 40 of the current Agreement, this will confirm our understanding reached in conference today that, effective October 1, 1985, to terminate the services of an employee who is absent from duty without authority for ten (10) days or more, the Company shall address such employee in writing at his last known address, by Registered or Certified Mail, return receipt requested, with copy to the Local Chairman of the employee’s craft involved, notifying him that his seniority and employment have been terminated due to his being absent without proper authority and that he may, within 20 days of the date of such notice, if he so desires, request that he be given an Investigation under Rule 40 of the current Agreement”

In compliance with the above-quoted Agreement, the Carrier, on September 4, 1997, wrote the Claimant as follows:

“Please be advised that your seniority and employment are being terminated effective September 4, 1997, due to your being absent for ten (10) days or more without proper authority, from 8-11-97 thru 9-03-97.

If you so desire you may request an Investigation under Rule 40 of the current Agreement within twenty (20) days of this notice.”

The Claimant did timely request the Investigation, and after several postponements, it was held on October 16, 1997.

On October 31, 1997, the Carrier wrote the Claimant as follows:

“ . . . This letter will confirm that as a result of our formal Investigation held on October 16, 1997, concerning you being absent in excess of ten (10)

days without proper authority, you are dismissed from employment for violation of S28.14, Safety Rules and General Responsibilities for All Employees, March 1, 1997.

Please arrange to return all company property and all Amtrak transportation passes in your possession. A check will be issued for any monies due you”

The Claimant held a regular Machinist position at Springfield, Missouri. Effective July 15, 1996, the Springfield facilities were closed. The work and employees were transferred to the Argentine Diesel Shop at Kansas City, Kansas.

Shortly after reporting for work at Kansas City, the Claimant’s health failed and he commenced a leave of absence from August through November 6, 1996, when he reported for and worked November 6 and 7, 1996, then he again sought leave due to a medical condition. The leaves, running 60 to 90 days in length, were requested and granted as each request was supported by a medical note attesting to the Claimant’s need for a leave. The Claimant’s leave expired on June 2, 1997. The Carrier never received a request nor a medical note asking for an extension, so the Carrier, on June 17, 1997, wrote the Claimant a termination letter similar to the one quoted at the outset of this Award. The Claimant, upon receipt of the June termination letter, called the Shop Superintendent, and it is at this point the Claimant and the Carrier disagree as to what occurred.

The Claimant stated his conversation was to the extent that it was too late to do anything about the June termination letter other than to request an Investigation.

The Shop Superintendent testified the Claimant advised him his doctor contends a letter was faxed to the Carrier advising of the need for an extension until August 11, 1997. The Shop Superintendent stated if the Claimant would provide medical certification, he would extend the leave and he could forget about the June termination letter. Subsequently, the Carrier received medical certification from the Claimant’s doctor, and did extend the Claimant’s leave until August 11, 1997.

The Claimant contends he was totally unaware that the June termination letter was withdrawn and that his leave had been extended through August 11, 1997. He stated he had requested an Investigation through his Local Chairman for the June

termination and was waiting for advice as to when and where the Investigation would take place.

The Shop Superintendent's testimony was backed by the System Support Clerk who handled the paperwork from the Claimant's doctor, from the Claimant, and from the Shop Superintendent.

Of all the letters flowing back and forth, the Claimant's position that he was unaware of the last extension from June 2, 1997, to August 10, 1997, is the one he did not get and was not aware of. His explanation of requesting from his Local Chairman an Investigation following the June termination letter and waiting over two months for a reply about it is difficult to accept. One phone call to either the System Support Clerk or to his Local Chairman any time during July or August would have clarified the situation for the Claimant, if he was, as he says, in the dark about the extension of the leave until August 10, 1997.

The Carrier's actions in terminating the Claimant's seniority and employment rights was consistent with its obligations set forth in the September 19, 1985 Letter of Agreement, quoted at the beginning of this Award.

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 11th day of April, 2000.