

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Paul N. Guthrie, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FRIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(a) The Agreement covering hours of service and working conditions between the Louisville & Nashville Railroad Company and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, effective Jan. 1, 1938, and subsequent revisions, was violated by the Carrier at Louisville, Kentucky, on January 22, 1951, in the treatment accorded L. B. Clasby by refusing to permit him to return to his position with the railroad; and,

(b) Employee Clasby shall be restored to service with all rights and privileges unimpaired and compensated for wage loss sustained on January 22, 1951, and subsequent thereto until restored to service.

OPINION OF BOARD: The claim herein considered is on behalf of L. B. Clasby, a former employe of the Respondent Carrier in the Mechanical Department of the South Louisville Shops, Louisville, Kentucky. He was regularly assigned as a stenographer-clerk in that Department.

On November 9, 1950, Claimant reported to the proper office and left a message for the Chief Clerk in which he asked for a leave of absence for 30 days. Claimant departed immediately and did not wait for the message to be delivered or for an answer upon his requested leave.

The Carrier took no action upon his request for leave on the grounds that no reasons were given as required by the applicable rule.

On the following day, November 10, the Carrier charged Claimant with being absent without leave and directed him to appear for a hearing on November 15. Upon request the hearing date was changed to November 20, on which date the hearing was held without claimant being in attendance. Apparently Claimant attempted to attend the hearing but was turned back at the gate.

In any event, after the hearing was completed, the Carrier took no action upon the matters investigated at the hearing, because of Claimant's failure to be present.

While a substantial part of the record before us is made up of the report of this investigation, we must disregard it in deciding this case, since Claimant was not present, and since the Carrier has taken no action based upon the investigation.

It appears from the record that nothing further was heard from Claimant until January 22, 1951, when he reported for work and was advised that he had forfeited his seniority and could not be permitted to return to service.

The Carrier contends that Claimant forfeited his seniority under the rules as he violated Rule 13 (a) which governs leaves of absence. Petitioner argues that there was no violation of 13 (a) since he was never given a leave of absence under that rule. The Carrier cites the fact that the Organization's local chairman and the Carrier's representative agreed that "Clasby is considered out of service under the provisions of Rule 13". The Petitioner contends this joint agreement has no binding effect, since Rule 20 (h) provides that "general rulings and interpretations" cannot be made except in conference between the Director of Personnel for the Carrier and the General Chairman for the Organization.

A careful review of the record in this case leads to the conclusion that Claimant forfeited his seniority by his behavior. It is not too much to ask that an employe show a reasonable diligence for his own interest. For some 74 days, until January 22, 1951, such concern for Claimant's own interest seems to have been totally absent. It is contended that he was ill during this period, however there is no showing whatsoever that it was impossible or even inconvenient for him to communicate with the Carrier and make proper arrangements for absence as required by the rules.

If we assume that Claimant's action on November 9, 1950 in requesting leave for 30 days, in fact gave him a 30 day leave, even though he gave no reasons and the Carrier took no action on the request, then for a period of some 44 days he was absent without leave and was subject to the forfeiture of his seniority under the terms of Rule 13 (d).

The record reveals no mitigating circumstances which would justify the Division in disturbing the determination that Claimant had forfeited his seniority when he reported back to work on January 22, 1951.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 18th day of July, 1952.