Award No. 13986
Docket No. SG-14156

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Murray M. Rohman, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

CHICAGO AND WESTERN INDIANA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago and Western Indiana Railroad Company that:

(a) The Carrier violated the current Signalmen's Agreement, as amended, particularly Rule 38, when it terminated the seniority of T. E. Shanahan.

(b) The Carrier be required to restore Mr. Shanahan's seniority and compensate him for all wage loss from July 7, 1962, until such time as he is returned to service.

(c) The Carrier also violated the August 21, 1954 National Agreement, particularly Article V, Section 1, paragraph (a), when Mr. H. W. Dunn, Signal and Electrical Engineer, did not deny the claim within sixty (60) days from the date it was filed.

EMPLOYES' STATEMENT OF FACTS: Mr. Thomas E. Shanahan is a reduced signalman and last worked for the Carrier in the capacity of signal helper on May 25, 1962, at which time he was displaced by a senior employe effective May 28, 1962. Inasmuch as there were no junior employes working in the helper class whom he could displace, he became furloughed at that time.

On February 20, 1962, Captain Edward L. Galus, Commanding Officer, Hq. Btry., 2D How Bn., made formal request of the Carrier to grant Mr. Shanahan leave of absence to attend summer encampment with the 33D Infantry Division Artillery at Camp McCoy, Wisconsin from June 15 to June 30, 1962, inclusive. That letter is Brotherhood's Exhibit No. 1.

At the time this request was made, Mr. Shanahan was working as a signalman; but, later due to the fact Carrier imposed a requirement that he have a valid driver's license in order to work as a signalman, it was necessary for him to accept a position of signal helper under protest. On April 24, 1962, Mr. Shanahan addressed a letter to Mr. F. W. Zabrockas, Signal and

indication that the Company received, that any injury occurred, two days later. Three telephone calls to his home to request his appearance before the Company Surgeon ended with no answer. A telegram was sent to his home ordering him to report to the Company Doctor on March 12, 1962, Mr. Shanahan refused to accept it. A registered letter was sent to his home requesting Mr. Shanahan to appear for a formal investigation and hearing to develop the facts in connection with his failure to report a personal injury at time of occurrence was also refused. A registered letter was again sent to his home advising him to report to the company doctor and he refused to accept it, altogether three registered letters and one telegram were refused. The three letters and the telegram are appended to the first submission, to be reviewed by the Board. The registered letters indicate Mr. Shanahan's refusal on the envelopes.

OPINION OF BOARD: The question in issue is whether the Claimant's seniority was wrongfully terminated. Claimant is a reduced signalman and last worked for the Carrier in the capacity of signal helper on May 25, 1962, at which time he was displaced by a senior employe. Inasmuch as there were no junior employes working in the helper class whom he could displace, he became furloughed on the effective date of May 28, 1962.

However, on February 20, 1962, while still working as a signalman, a formal request was received by the Carrier to grant the Claimant a leave of absence to attend summer encampment. Thereafter, on June 1, 1962, such leave of absence was granted for the period of June 18 to June 29, 1962. Inasmuch as June 30 and July 1 were considered to be rest days for the Claimant, he was not due to return until July 2, 1962. Upon his failure to return on the latter date, the Carrier terminated him on the basis of Rule 39 of the effective agreement which reads as follows:

"RULE 39.

> Employes given leave of absence in writing by proper authority of the Company will retain their seniority rights. Employes failing to return to duty on or before the expiration of the leave of absence will lose their seniority rights, unless an extension has been obtained in writing as outlined in Rule 38. An employe returning to service prior to the expiration of his leave of absence shall notify the proper officer five (5) calendar days in advance of reporting for duty."

It will be recalled, however, that the Claimant as of May 28, 1962, was on furlough status. Therefore, the significant question is whether the Carrier was required to adhere to Rule 36 (e), hereinafter quoted:

> "An employe laid off in force reduction, including one who has elected to accept furlough under the provisions of Rule 36 (b) of this Article, must keep the officer who notified him of the reduction informed, in writing, of his address. He must return to duty within ten (10) calendar days from the date a notice by registered U. S. Mail is mailed to his last recorded address, directing him to report for service in an advertised permanent position or vacancy for which no bids have been received from qualified employes. If there are conditions which prevent him from returning to duty within this ten (10) calendar day period, he must, within the ten (10) calendar day period, report by telephone or otherwise to the officer notifying him, giving his reasons for being unable to return to duty, and must request permission to be absent. When an employe secures permission to be

absent this will extend the ten (10) calendar day period by the length of the period he is granted permission to be absent. An employe failing to report for duty within ten (10) calendar days from the date such notification is sent to his last recorded address, who has not reported and secured permission to be absent, shall forfeit all seniority and shall cease to be an employe of the Company."

The Carrier proceeded on the assumption that the leave of absence superseded the furlough status of the Claimant. This was erroneous as the leave of absence which was granted, was requested while the Claimant was still a signalman. Since then, he had been reduced to a helper and subsequently furloughed. Thus, the leave of absence was a superfluous document, processed in the normal course of events, but completely lacking any effect.

The controlling rule applicable to this controversy is Rule 36 (e), which, in substance requires the Claimant to be notified by the Carrier to report for service. Lacking such notice from the Carrier, the Claimant did not violate any leave of absence as he was then in a furloughed status.

The Board having determined that the Carrier wrongfully terminated the Claimant, it is directed that he be restored to service with all seniority rights preserved and that he be compensated for any loss of earnings from July 24, 1962. In this respect, the Carrier is entitled to deduct from such payment, any wages which the Claimant earned or could have earned with reasonable diligence.

The contention of the Petitioner that Article V, Section 1, paragraph (a) was violated is denied. (See Award 13603.)

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes 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 violated the Agreement to the extent indicated in the Opinion.

AWARD

Claims (a) and (b) sustained.

Claim (c) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of November 1965.

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

INTERPRETATION NO. 1 TO AWARD NO. 13986
DOCKET NO. SG-14156

Name of Organization:

BROTHERHOOD OF RAILROAD SIGNALMEN

Name of Carrier:

CHICAGO AND WESTERN INDIANA RAILROAD COMPANY

Upon application of the representative of the employe involved in the above Award that this Division interpret the same in the light of the dispute between the parties as to its meaning and application, as provided for in section 3, First (m) of the Railway Labor Act, as approved June 21, 1934, the following interpretation is made:

Initially this Board had before it a claim based upon the issue whether the Claimant was wrongfully terminated for failure to return to duty before the expiration of a leave of absence.

In Award No. 13986, the Opinion of the Board stated as follows:

> "The Board having determined that the Carrier wrongfully terminated the Claimant, it is directed that he be restored to service with all seniority rights preserved and that he be compensated for any loss of earnings from July 24, 1962."

In this request for an interpretation, the Organization seeks a determination of issues which were not initially presented. Specifically, it desires that we herein decide that the Claimant had seniority in the mechanic and assistant classification — classes in which he held seniority prior to his signal helper classification.

The significance of the Organization's thrust in requesting an interpretation of our Award is highlighted by the following statement from Page 9 of the original Record:

> "The question of whether or not the Carrier can arbitrarily and without negotiation impose the requirement that an employe must possess a valid driver's license in order to work a position in the signalman class is another matter of contention between the parties and is of no consequence here, other than to show why the Claim-

ant was working in a lower class at the time he was furloughed. The only comment that we have to offer here relative to this requirement is that we do not agree that the Carrier has the authority under the Agreement nor the Railway Labor Act to impose such unilateral restrictions as a condition of continued employment."

Thus, it is evident that we were then concerned only with the narrow question which precipitated the temination. In restoring the Claimant to all seniority rights, we were not enlarging or limiting those rights which he possessed at the time of his termination. If he had seniority rights in the classifications above the helper class, he retained those rights. In the event that he did not have such rights at the time he was wrongfully terminated, our Award did not create greater rights for him. Hence, the question is resolved to the extent that, in restoring the Claimant to all his seniortiy rights, we placed him in exactly the same seniority position in whatever classifications that he held, prior to his termination.

It is, therefore, our conclusion that the Division has no authority, at this juncture, to definitely determine whether the Claimant did or did not hold seniority in the higher classifications, inasmuch as that issue was not before us.

Referee Murray M. Rohman, who sat with the Division, as a neutral member, when Award No. 13986 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of January 1967.

DISSENT TO INTERPRETATION NO. 1 TO AWARD NO. 13986, DOCKET NO. SG-14156.

The dispute covered by Award No. 13986 had its beginning in Carrier terminating Claimant's service on the grounds that he had overstayed a leave of absence.

Nowhere in the record of handling on the property or in Carrier's Ex Parte Submission in Docket SG-14156, now Award 13986, is there any evidence of Carrier having taken the position that Claimant forfeited seniority in classes above that of helper prior to the leave of absence incident. However, in its Rebuttal Statement in Docket SG-14156, which, because of the Division's Rules pertaining to Submissions, the Employes were not permitted to answer, Carrier intimated there were jobs Claimant could have held in the Mechanic Class at the time he accepted a helper position and in the brief filed by the Carrier Member at the panel discussion Rule 43 was quoted presumably to suggest that perhaps Claimant had forfeited seniority in classes above that of helper.

The Division found that the leave of absence which Claimant was alleged to have overstayed "was a superfluous document".

Against the background summarized above, it certainly was not mere coincidence that the Division directed "that he [Claimant] be restored to service with all seniority rights preserved".

If the issue of Claimant's overall status was before the Division when Award 13986 was made, the Division ruled in favor of Claimant when it held that he should be restored to service with all seniority rights preserved.

If the issue of Claimant's overall status was not before the Division when Award 13986 was made, the Referee exceeds his authority when under the guise of an interpretation he redecides the dispute on the basis of new argument presented by Carrier.

In the final analysis the Interpretation serves no purpose other than to create another dispute which certainly is not the Board's function; therefore, I dissent.

/s/ G. Orndorff
G. Orndorff
Labor Member

REPLY TO LABOR MEMBER'S DISSENT TO INTERPRETATION NO. 1 TO AWARD 13986.

The dissent of the Labor Member merely expresses the same views that were previously expressed by him during the panel discussion preceding the rendition of Interpretation No. 1 to Award No. 13986.

The dissenter states:

> "If the issue of Claimant's overall status was before the Division when Award 13986 was made, the Division ruled in favor of Claimant when it held that he should be restored to service with all seniority rights preserved."

The dissenter is, or should be, well aware of the fact that Claimant's "overall status" was not before the Board when Award 13986 was made as is clearly indicated in that portion of the Petitioner's original Ex Parte Submission which is quoted in the Interpretation. Therein the Petitioner definitely and unequivocally stated that the question of Claimant's status in the "signalman class" was not before the Board. Thus, the only issue confronting the Board was Claimant's status in the "signalman helpers class" and the Board could not go beyond that issue in deciding the dispute.

Had Claimant's status in the "signalman class" been before the Board it could not have been found that the "leave of absence document" was a "superfluous document". The Board then could only have found that the Claimant was not in a "furlough status"; that he had overstayed his leave; and that Carrier had properly terminated his services pursuant to the mandatory requirements of Rule 43. For some unknown reason the dissenter fails to recognize or otherwise chooses to ignore this feautre.

Interpretation No. 1 merely reaffirms the original decision and in no way redecides the dispute.

/s/ G. C. White
/s/ R. E. Black
/s/ P. C. Carter
/s/ G. L. Naylor
/s/ T. F. Strunck