

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John J. McGovern, Referee

PARTIES TO DISPUTE:

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

**THE DENVER AND RIO GRANDE WESTERN
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6474) that:

1. Carrier violated rules of the current Clerks' Agreement when on November 10, 1966 it removed the name of Mr. John L. Aragon, Salida, Colorado, from clerical seniority roster No. 21, Groups 1 and 2.
2. Carrier now be required to return the name of Mr. John L. Aragon to clerical seniority roster No. 21 (Groups 1 and 2) with full seniority rights unimpaired and allowed to place on position at Glenwood Springs, Colorado on which displacement was made on December 17, 1965, prior to being granted leave of absence.

EMPLOYEES' STATEMENT OF FACTS: Mr. John L. Aragon's position at Salida, Colorado was abolished in December 1965. Claimant stated he desired to displace on the position of Station Clerk at Glenwood Springs, Colorado and at the same time requested a 90-day leave of absence, as provided in Rule 17 (a) of the current Agreement. The leave was granted by the Carrier. While Claimant was on leave he was used to perform extra work and fill vacation vacancies at Salida, Colorado. He also worked a temporary vacancy due to the regular assigned employee taking a sick leave. (Employees' Exhibit No. 1.) Upon return of regular employee assigned to the position of Cashier-General Clerk, Claimant was displaced and was used by the Carrier to continue filling vacation vacancies and performing extra work.

Claimant asked for and was granted another 90 days leave of absence. Shortly thereafter the Employees received the Carrier's concurrence to give Claimant a full 180 days leave excluding the days he performed service for the Carrier at Salida, prior to said concurrence. (Employees' Exhibit No. 2.) His leave expired on September 15, 1966 and Claimant was denied further leave. (Employees' Exhibit No. 3.) On that date Claimant was working a vacation vacancy at Salida, Colorado and Carrier continued to use him on that vacancy until September 21, 1966; Carrier then used Claimant to work on

In view of this record, it is clear that Mr. Aragon was not available for service with this Carrier and that Superintendent was correct in notifying Mr. Aragon that he had lost his seniority by his failure to report for duty at the expiration of his leave of absence.

Claim remains denied.

Yours truly,

/s/ J. W. Lovett
J. W. Lovett
Dir. of Personnel"

Quoted below is letter from Special Agent Frank Burris which was enclosed with above letter:

"Pueblo, Colorado
December 20, 1967

Mr. A. A. Capps:

Reference to your report of December 8, 1967, with request of the work status of Mr. John L. Aragon, 507 East 3rd Street, Salida, Colorado, since he was granted the leave of absence on December 17, 1965.

Checking at Salida on December 18, 1967, I developed that Mr. Aragon established a date of March 31, 1966, as a regular employee which is a substitute mail clerk, with the U.S. Post Office Service at Salida, Colorado. Mr. Aragon is still presently employed at that job, and also reportedly is the Circulation Manager for the Rocky Mountain Newspaper at that location.

/s/ Frank Burris

NOTE: Rocky Mountain News at Denver advise Virginia Aragon, wife of John Aragon, is listed as their Circulation Manager at Salida.

/s/ A. A. Capps
12/21/67"

OPINION OF BOARD: Claimant was displaced from position of Cashier-General Clerk at Salida, Colorado, effective December 16, 1965, by a senior employee. On December 17, 1965, Claimant wrote to the Division Superintendent requesting a ninety day leave of absence, effective as of that date, advising that he wished to place himself on a Group I position at Glenwood Springs, Colorado or in the alternative on a Group 2 position at Montrose, Colorado. Leave of absence was granted from December 17, 1965 to March 16, 1966. He was subsequently, at his request, granted another leave of absence of 90 days to expire June 13, 1966. He was allowed a 20 day vacation during the month of June, 1966 and on June 28, 1966 requested another 90 day leave of absence, which, with the concurrence of the Organization, was granted and was due to expire on September 15, 1966. On September 13, 1966, he requested another 90 day extension, but this time Carrier refused.

Claimant did not displace on the position at Glenwood Springs after the leave of absence expired but remained at Salida where he either worked

vacation relief or relieved employees working vacation relief for 24 days during the period between September 17 and October 28, 1966.

Since there was no more vacation relief at Salida after October 28th, and since he had failed to report to Glenwood Springs, Carrier notified him that his name was removed from the seniority roster for his failure to report for work upon the expiration of his leave of absence.

Carrier bases its action on Article V, Rule 30, which reads:

"ARTICLE V.

RULE 30. LEAVE OF ABSENCE

(b) Failure to report for duty upon expiration of leave of absence will result in forfeiture of seniority rights except when such failure is the result of unavoidable delay, in which case the leave will be extended to include such delay."

A review of this record convinces us that Claimant, after his initial displacement by a senior employe at Salida, requested and was entitled to the position at Glenwood Springs. Although he never physically displaced the occupant of the position at Glenwood Springs, he had every opportunity to do so upon the expiration of his leave of absence. He failed to do so, preferring to take odd jobs at other locations. The Leave of Absence rule quoted *infra* is clear and concise. Failure to report for duty upon expiration of a leave of absence results in loss of seniority rights unless such failure is due to an unavoidable delay. Such an unavoidable delay is neither alleged nor claimed in this record. The failure to report was a purely preferential, volitional act of Claimant, the penalty for which is loss of seniority rights. We will deny the claim.

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 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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of December 1968.

Keenan Printing Co., Chicago, Ill.

Printed in U.S.A.