

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 223.21
Docket Number MW-22190

Louis Yagoda, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(St. Louis-San Francisco Railway Company

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

(1) Because of the Carrier's refusal to grant Limmie Fields, Jr. a leave of absence in conjunction with an injury sustained while in the Carrier's service on June 2, 1976, he be reinstated and restored to his position as trackman with seniority and all other rights as such unimpaired (System File A-9440/D-9179)."

OPINION OF BOARD: On June 2, 1976, Claimant, a trackman reported to Carrier supervision that he had suffered a back injury while working on an assignment with a tie gang. He was taken to the hospital emergency ward and after further examination, x-ray and diagnosis within the next two days by a physician at Springfield, Missouri was advised by the latter doctor that he was suffering lumbar strain and needed two days bed rest.

From that time, Claimant did not report for work or communicate with Carrier until July 28, 1976, 56 days after his accident and about 54 days after the examination by physician resulting in the latter's having prescribed two days' bed rest. On July 28, 1976, a letter was sent to Carrier's Division Engineer by Claimant's General Chairman requesting a leave of absence for Claimant and enclosing with said letter a statement dated July 20, 1976 from a physician in Tupelo, Mississippi (Claimant's home community) stating that Claimant "has had recurrent low back discomforts" and that the doctor was sending him to St. Louis on July 26, 1976 for "evaluation of a possible ruptured disc". The statement concludes: "Please grant leave of absence from June 2, 1976 to indeterminate date."

Carrier denied the July 28, 1976 request for leave of absence citing Rule 87 of the Agreement which states, in pertinent part, (at 87(a)):

"Written leave of absence, properly approved by Division Engineer or superior officer, is required in every instance of an employe entitled to be working who is absent for 30 calendar days or more..."

In the course of the appeal exchanges which followed, **Employees** added to the record, statements from a St. Louis **neurosurgical** physician, one dated December 28, 1976 **stating** that Claimant was under his "professional care and was totally incapacitated" from **January** 1, 1977 to February 1, 1977, another dated December 15, 1976, stating that the patient is having "difficulty with his lower back" and is to be off work until January 1, **1977** and a third captioned Supplemental Report dated **December** 28, 1976 stating that "although **Mr.** Fields right sided low back pain has been helped, he still has considerable pain, mainly in the center of the low back." The statement prescribed certain exercises, injections and physical therapy, predicted that **Mr.** Fields should be able to return to work by February 1, 1977 and **recommended** leave of absence until that time.

It will be seen that the foregoing, all of it bearing dates **considerably** beyond the lapse of the 30-day limitation set down in Rule 87 (a), do **not** serve to explain Claimant's long silence during or justification for not **having** acted within said limitation in the face of the reality that such absence was maintained by **him** for the full 30 day period and considerably beyond that without a word from him

We find noteworthy the statement **made** in the record by Claimant's **Union** representatives that they had advised **Claimant** that he **should** obtain a statement from his doctor during the month of June 1976 "in order that a leave of absence could be issued to **him** while off work due to his injury sustained on June 2, 1976."

Claimant did not follow this advice. The only explanation given by **Claimant's** representatives is that Claimant "**made every** effort to obtain such letter but **was** unable to secure the letter until July 20, 1976."

There is no further explanation (**much** less probative support) concerning why, if such "efforts" were **made**, they were not successful.

Thus, aside **from** the clear obligation of the **controlling** rule, the **Claimant** had specific advice from his **own** organization **concerning** his obligation to conform to said rule. He did **not** fulfill such **obligation and without** any tangible explanation for such failure.

Carrier points out - and it is not refuted in the record - **that Claimant** was previously removed from service because of his absence

for more than 30 days without an approved leave of absence (such absence occurring **during** January and February, 1975) and following a hearing he was subsequently returned to service but without pay for time lost. This earlier incident should have caused Claimant to be well aware of the requirements of Rule 87 and his obligation to **comply** with them. Carrier is justified, also, in invoking this history to justify the degree of penalty applied in reaction to the instant **infraction**.

For these reasons, we find no justification for interfering with **management's** recourse to the termination penalty in this matter.

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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By **Order** of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 16th day of **June** 1978.