

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22327
Docket Number CL-22379

Abraham Weiss, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(The Atchison, Topeka and Santa Fe
(Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
GL-8496, that:

(a) Carrier violated the provisions of the current Clerks' Agreement at Chicago, Illinois, on August 16, 1976, when it removed Mr. Tom Asta from the service of the Carrier, and

(b) Mr. Tom Asta shall now be reinstated into the service of the Carrier with all past rights restored on the basis they were prior to his dismissal from the service of the Carrier on August 16, 1976, and

(c) Mr. Tom Asta shall now be compensated eight (8) hours' pay each work day of Control Clerk Position No. 6079, at the rate of \$52.3157 per day since August 16, 1976, and the same for each work day of Position No. 6079 until he is reinstated into the service of the Carrier, and

(d) That all letters pertaining to this investigation and the transcript of the investigation be withdrawn by the Carrier from Tom Asta's personal record.

OPINION OF BOARD: This case comes to us under the following circumstances;

Claimant was on a medical leave of absence. He was released by his personal physician to return to work and did report and worked on June 14, 1976. The next day, June 15, Claimant's supervisor, Agent Wujcik, notified him that he was being placed on 8 medical leave of absence until he furnished 8 doctor's statement indicating that Claimant was not taking any medication for his illness. The Agent confirmed this in writing the next day, June 16, adding that "you are herewith advised that it is your responsibility to initiate leave of absence papers within the required time limits covering."

Claimant did not supply 8 completed leave of absence form within the **30-day** period of the leave nor did he apply for **an** extension of the leave by July 15.

Carrier scheduled an **investigation** by letter of **July 24** (emended by letter of July 26) to determine Claimant's responsibility for being absent from duty without authority. Following the **hearing**, Claimant **was removed from service**. Claimant (and his representative) **argue that** he **was** forced on medical leave by the Carrier on June **15** without justification. Carrier's Agent **and Assistant Agent**, however, both testified that **Claimant** was requested on June **14** to transport waybills to **another Carrier**, that **Claimant** refused, **stating that** he **was too busy and that the company Car was unsafe**. (The car was **8 new** leased auto, insured by Carrier). When urged to perform the **assignment**, Claimant then, it is alleged, **advised** the Assistant Agent that he **was** taking medication for **an** equilibrium problem and that he could not drive the car, **and did not even belong "onthetracks"** so long as he **was on this medication**. On the following day, June **15**, the Agent and the Assistant Agent further discussed this matter with the **Claimant**, who, they assert, **repeated that** he could not drive the **company car and "should not go out on the tracks"** because **of the medication he was taking**. This led the Agent to place Claimant on immediate medical **leave of absence** from June **14** through **July 14, 1976**. Claimant signed the **leave of absence** form which provides specifically that employees **are** expected to **report** for duty on **or** before the expiration of such leave; that failure to so report constitutes sufficient **cause** for dismissal; and that requests for leave extension must be timely **made**.

At the hearing, **Claimant** denied that he **was** taking **medication** for an equilibrium problem. He **also** St&ted: "**I** did not feel that **8** Hertz rent-&-Car or the company **vehicle**, which **is 8 disaster**, was **safe** for me to drive."

On July **23, 1976**, **Claimant** submitted **8** signed leave of absence form which did not list **any** dates and on which the phrase "without **pay**" was deleted.

Carrier justifies its action **in** dismissing **Claimant** on essentially two grounds:

1. **Claimant**, under **Rule 21-C** of the agreement, **automatically terminated** his seniority.

2. Claimant, by not **arranging** to extend his leave which expired at midnight, July 14, 1976, was **absent without leave.**

Rule 21-C provides:

"An employee who fails to report for duty at the **expiration** of the leave of **absence** shall be considered out of service, except that when failure to report on time is the result of unavoidable **delay** the leave of **absence will** be extended to include such delay."

Rule 21-C is clear, unambiguous, and essentially automatic in its operation. Under the rule, an employee **voluntarily** forfeits his seniority rights by failing to return from leave of absence. The record in this **case** includes no reference to **unavoidable delay** which might warrant **an** extension of the leave. **The** record also shows no evidence that **Claimant** requested an extension of his leave within the **applicable** time frame.

Carrier's **General** Rule 13 provides:

"**Employees** whose ability to perform their duties **in** the **usual** manner becomes **impaired because** of accident **or** disease must **pass 8 satisfactory** physical **examination** when so required. Employees who have been off duty because of accident **or** **disease may** be required **to** pass **8 satisfactory** physical examination before returning to duty.

"Employees must not be absent from duty without proper **authority**, and when authorized absence is in excess of ten (10) calendar days, entire absence **must** be authorized by formal **leave** of absence (Form **1516 Standard**) except for scheduled vacation period."

Claimant had **30 days** within which to furnish 8 doctor's statement **that** he **was** not taking **any** medication for his illness--which his own **physician** originally diagnosed as **an** equilibrium **condition**. This **was** 8 simple requirement, **actuated** by **Claimant's** own **admissions** to both the Agent and the **Assistant** Agent on the first day he **returned** to work following his medical leave of **absence** from May 6 through June 14.

Claimant did **not** communicate with Carrier for some 38 days after he was placed on leave **starting June 14** nor did he **furnish** Carrier with 8 doctor's **statement** as requested. We **must** admit to some puzzlement **as** to why **Claimant** did not comply with Carrier's **request**. **The point is**, he did **not**, and the self-executing provision of Rule **21-C** was triggered. We **must** conclude, therefore, that **Claimant** absented himself **from** his assignment **beyond** the period of his authorized leave **and** thereby terminated his employment **relationship**.

The hearing which Carrier accorded **Claimant**, though **not required** under Rule **21-C**, demonstrated that **Claimant** was absent without leave. This, in itself, constitutes **another basis** for **Claimant's** dismissal from service. **Claimant's** leave Of absence expired at midnight on **July 14, 1976**. He did **not** request an extension before that date. He did not report for duty. He was, therefore, **absent from** duty without proper authority. This Board has in many Awards held that **unauthorized absence from** duty during assigned hours is a **serious** Offense, which frequently results in dismissals from service, and this Board has upheld such dismissals.

Claimant, as noted earlier, asserted that he **was forced** to take medical leave commencing **June 15**, **against** his wish. However, by signing the **standard** leave of absence form, which contained the requirement that **employees must** return to service on or before the expiration of such leave, **Claimant** was under an **obligation** to return to service **prior** to the **expiration date** of such leave, or request an extension. As discussed above, **Claimant did not comply with the terms and conditions** Of such leave, clearly stated on the form which he signed.

Carrier, on several occasions **during** the processing of this **Claim** offered to reinstate **Claimant** on 8 leniency basis, without pay, provided **Claimant** underwent 8 complete physical, to be reviewed by **Carrier's** Chief Surgeon. **Carrier's** leniency offer was rejected.

We **must** conclude, on the **basis** of the record before us, **that** **Claimant** failed to comply with the **terms** of his leave and by such failure automatically terminated his employment relationship with the Carrier. **Claimant** had 30 days prior to the expiration of his leave to resolve the issue, by furnishing 8 doctor's **statement**. This he did **not** do nor does the record **indicate that** he took any steps during the **30-day** period to visit his doctor, obtain 8 medical stat-t, or communicate with the **Carrier** to secure an extension of his leave.

Nor is any unavoidable delay alleged or claimed in the record.

By his inaction, Claimant lost his 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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1979.