

NATIONAL RAILROAD **ADJUSTMENT BOARD**

THIRD DIVISION

Award Number 22865  
Docket Number CL-22915

Paul c. carter, Referee

(Brotherhood of Railway, Airline and  
( Steamship Clerks, Freight Handlers,  
( **Express** and Station **Employees**

PARTIES TO DISPUTE: (

(St. Louis-San Francisco Railway Company

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood (**GL-8800**)  
that:

1. The Carrier acted in an arbitrary, capricious and unjust manner and violated the agreement between the parties when on October 6, 1978, it failed and refused to permit rotating extra board employee, B. J. Goode, to report for his **assignment**.

2. In view of the foregoing arbitrary, capricious and unjust action of the Carrier, it shall now be required to:

- (a) Restore clerk B. J. Goode to service of the Carrier with all **seniority**, vacation and other rights unimpaired.
- (b) Pay clerk Goode for all time lost **commencing** with October 6, 1978, and continuing until Mr. Goode is restored to service.
- (c) Pay clerk Goode any amount he incurred for dental, medical or surgical expenses for himself or dependents to the extent that such **payments** could have been paid by Travelers Insurance Company under Group Policy GA-23000 or under Aetna Group Policy GP-12000 **and** in the event of the death of Mr. Goode, pay his estate the amount of life insurance provided for under said policy. In addition, reimburse him for premium payments he may have made in the purchase of suitable health, welfare, life insurance and dental insurance coverage.
- (d) Pay clerk B. J. Goode interest at the rate of **10% compounded** annually on the anniversary of this claim for amounts due under Item (b) above.

OPINION OF BOARD: The claimant had been in Carrier's service since March 17, 1972. At the time of the occurrence out of which this dispute arose, claimant was regularly assigned to Rotating Extra Board No. 10, Position No. L-C, at Fort Worth, Texas. At about **11:00 P.M.**, September 28, 1978, claimant contacted the caller at Fort Worth, and according to the Carrier, requested authority to be away from his assignment on that date for personal reasons, for one day only.

On October 9, 1978, claimant was notified by the Division Superintendent:

"Our records show that you were granted a leave of absence from September 28, 1978, at **11:10** p.m. until September 29, 1978, at **11:10** p.m. Our records further show that you did not report at the **end** of this leave of absence and therefore, **under and** in accordance with Rule 34(b) of the Clerks' Agreement, you are considered out of the service. Accordingly, your record is being closed."

Rule 34(b) of the Agreement, referred to **in** the notice, reads:

"Rule 34. **VOLUNTARY ABSENCE FROM DUTY:**

\* \* \* \* \*

"(b) Leaves of absence for thirty days or more shall be in writing, signed by the proper officer. An **employee** who fails to report for duty at the expiration of leave of absence shall be considered out of the service, except that when failure to report on time is the result of unavoidable delay, the leave shall be extended to **include** such delay. Except as provided in Rule 35 or by agreement between the Management and General **Chairman, employees** accepting outside employment while on leave of absence shall be considered out of service."

On October 13, 1978, claimant requested an unjust **treatment hearing** under Rule 32 of the Agreement. The hearing was conducted on November 14, 1978, and on November 17, 1978, claimant was advised:

"This is to advise that no evidence of probative value was presented in the hearing held with you on November **14, 1978** to establish that you were unjustly treated as alleged.

"Therefore, inasmuch as your failure to report for duty at the expiration of your leave of absence was not the result

"of unavoidable delay you are still being considered out of service as required by **Rule** 34 of the Clerks' Agreement."

In the handling on the property there was **some** question between the parties as to whether the discipline rules of the agreement applied or whether **claimant** forfeited his seniority under Rule 34. **On** February 5, 1979, Carrier's Director of **Labor** Relations wrote the District Chairman in part **in** connection with a conference that was held on January 22, 1979:

"It **was** understood and agreed **among** us that this **concerns** only the question of whether or not the Claimant has maintained his seniority **under Rule** 34(b) of the Clerks' Agreement. In other words, this is not a question of discipline."

At the **same** time the Carrier offered to reinstate **claimant** with seniority, vacation **and** other rights unimpaired, but without pay for **time** lost.

The District **Chairman** responded in part:

"~~xxxx~~ First, with respect to Mr. Thompson's statements in his February 5 letter, he indicates **that** during conference on January 23, 1979, it was understood **and** agreed that the **only** question in this dispute was whether claimant had **maintained** his seniority under **Rule** 34 of the clerks' agreement. The only **reason** I agreed to this was because of the Carrier's repeated statements that this was not a discipline case, but **was simply** a question as to whether the claimant had **maintained** his seniority **under Rule** 34. After repeated **assurances** by all Carrier officers present at that conference, an offer was **made** to reinstate **claimant** Goode with seniority, vacation and other rights unimpaired but without pay for time lost. I am at a total loss to understand such an offer in a case involving claimant's seniority. This is the usual and **customary procedure** ~~for~~ handling a case involving discipline, but is not one applicable involving a question of seniority.

"Mr. Thompson's February 6 letter does not completely reflect the offer which the Carrier conveyed to **me** during our conference, as I was under the opinion that the Carrier had offered reinstatement to **claimant** with seniority, vacation and other rights unimpaired but without pay for **time** lost

"and without the right to handle for pay for time lost.  
It was because of the Carrier's denial to allow us to handle  
for pay for **time** lost that claimant rejected this offer of  
reinstatement."

**Our considered** opinion, based upon the record, is that claimant's  
absence in excess of one day did not **come under** the seniority **forfeiture**  
provision of **Rule** 34(b), but was actually a case of discipline. See recent  
Award 22479. We do not consider a one-day lay-off to the caller as a  
leave of absence contemplated by Rule 34(b). Our opinion that **we** are  
dealing with a discipline case is strengthened by the Carrier's inclusion  
of claimant's personal record with its submission to the Board, which may  
have **some** bearing in a discipline case, but not in a forfeiture of seniority  
case.

After very careful consideration of the entire record, it is the  
conclusion of the Board that the proper solution of the dispute, and we so  
award, is for the Carrier to again **extend** to claimant the offer to reinstate  
him as clerk, with seniority and other rights unimpaired, but without pay  
for time lost, provided that he can pass satisfactory return-to-work  
physical examination.

The Organization **has** presented no agreement support for Parts (c)  
and (d) of the Statement of Claim, and they are denied.

Due to the unusual **circumstances** in this case, our award should  
be considered as being confined to this case alone and is not to be used  
as a precedent in any other case involving what may be considered similar  
facts.

**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 violated to the extent indicated **in** the  
opinion.

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A W A R D

Claim sustained to the extent indicated in Opinion and Findings.

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

ATTEST: *A. W. Pauls*  
Executive Secretary

Dated at Chicago, Illinois, this 30th day of May 1980.