

NATIONAL RAILROAD ADJUSTMENT BOARD

--

THIRD DIVISION

Award Number 23287
Docket Number CL-23388

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(Detroit, Toledo and Ironton Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8995) that:

(a) The Carrier violated the Rules Agreement dated May 1, 1966, amended January 1, 1971, particularly Rule 11(f) and others, when M. A. Adams, furloughed employee at Springfield, Ohio, was removed from service. It is the position of Brother Adams and this Organization that we have furnished satisfactory reason for his not reporting to Flat Rock, Michigan. In addition, a medical report is forthcoming from his personal physician regarding the requested move due to Brother Adams' health in recent months. Please refer to Brother Adams' letter to you of September 11, 1978, copy of which is attached.

(b) The Carrier now be required to return M. A. Adams to the seniority roster with all seniority, vacation, sickness and other rights retained. In addition, Brother Adams should be compensated for all time lost as a result of this violation.

OPINION OF BOARD: This is a companion case to Award No. 23286.
The dispute here involves the Carrier's finding that claimant was properly considered out of the service when he did not respond within seven days of receipt of notice to report for 8 permanent bulletined position.

The Carrier contends that its action was in accordance with paragraph (f) of Rule 11 of the applicable agreement, which reads:

"(f) Furloughed employee failing to return to service within seven (7) calendar days after being notified (by mail or telegram sent to the last address given) or give satisfactory reason for not doing so will be considered out of the service."

In this case, 86 in Award 23266 we are again faced with numerous assertions by the Organization, but assertions alone do not constitute proof. We are forced to deny the claim for lack of proof by the Organization of a violation of the Agreement.

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

That **the parties** waived **oral** hearing;

That the Carrier and the Raployes involved in **this** dispute are respectively Carrier **and** Raployes 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: *A.W. Paulos*
Executive Secretary

Dated at Chicago, **Illinois**, this 15th day of May 1981.

