

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24255
Docket Number MW-24328

Robert W. McAllister, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way **Emploes**
{ **Union** Pacific Railroad Company

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

(1) **The** Carrier violated the Agreement when it improperly **withheld** **Sectionman** Miguel Andrade **from** service beginning March **11, 1980** (System File 6-22-11-14-55/013-210).

(2) **Sectionman** Miguel **Andrade** be returned to service with seniority and all other rights unimpaired and he shall be **compensated** for all wage loss suffered."

OPINION OF BOARD: Miguel Andrade, the Claimant, was a sectionman at the Carrier's Denver, Colorado, facility with service since July 9, 1975. By certified letter dated February 25, 1980, Claimant was informed he **was** considered as having **voluntarily** forfeited his seniority and employment rights by being absent five (5) consecutive, **working** days without having secured proper authority.

The **Organization**, referring to Paragraph K of Rule **48**, asserts the voluntary forfeiture of seniority of this rule has **application only when** justifiable reason **is not** shown for **failure** to obtain proper authority for absences. It is the Organization position that the break down of **Claimant's** automobile two thousand miles **from home** is a "justifiable reason", as contemplated by Rule **48** (K).

It is undisputed **Claimant** was scheduled to begin his vacation on February 4, **1980**, and was due back at work on February 19, 1980. **Claimant** absented himself **from** work on February **1**, 1980, without **permission**. On February **15**, 1980, the Claimant addressed a Western **Union** telegraph to the **Carrier's** Roadmaster and the General Chairman. **The General** Chairman received the telegram on February **18**, and relayed the content to the **Roadmaster** Clerk next day. The telegram stated:

"My car broke **down** I be there **lat(t)er** end a few days."

Claimant did not return to work until March 11, 1980.

The Carrier's **position** is that Claimant failed to justify his absence and rejected a **proffered** repair bill as inadequate support of Claimant's assertions of break down, especially since it was first **presented to** Carrier on June 16, 1981, **some** fifteen months after the absences. Putting aside the issue of receipt of telegram, the Board finds no basis to dispute Carrier's decision that such a **communication** does not constitute obtaining proper authority.

Considering Claimant's absence on February 1, 1980, and his total silence from February 15 through March 11, 1980, we will not question the Carrier's judgment that **Claimant** failed to receive proper authorization to be absent. Rule 48 (K) is self-executing and, under the **circumstances** herein, does not require handling under **any** rule of the agreement.

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: Acting Executive **Secretary**
National Railroad Adjustment Board

By *Rosemarie Brasch*
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 23rd day of March 1983.

