

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24624
Docket Number CL-24876

Robert Silagi, Referee

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

PARTIES TO DISPUTE: {

(Chicago and North Western Transportation Company

STATEMENT OF CLAIM: Claim of the System Committee (GL-9666) that:

1. Carrier violated the terms of the effective Agreement. particularly Rules 21, 23 and 26, when under date of December 4, 1980, it removed from its seniority roster, **Mr. Ralph Condo**, and,

2. Carrier shall now be required to reinstate Mr. Ralph Condo, with all rights unimpaired and compensate him for all time lost commencing with the first day he was available for service on the initial filing date of claim, February 23, 1981, or December 4, 1980, the date his name was removed from further employment considerations, whichever is appropriate reparation.

OPINION OF BOARD: Claimant, a messenger with seniority date of April 15, 1976, resided in Cicero and worked in the Chicago **Metropolitan** Area. On May 31, 1980, Claimant was involved in an accident while on the job which resulted in his absence from work. Because of his complaints about low back pain, a consequence of his **injury**, Claimant was given a medical examination on October 12, 1980 and taken out of service for medical reasons. On October 27 Claimant reported back to Carrier's Medical Department and was released for service. He worked on the 29th and 30th but called in and laid off on the 31st. **He** again absented himself on November 1st and 2nd and failed to call in to protect his assignment. He continued his absence until November 9th when he telephoned I. B. **Sacheck**, Agent, in Proviso, Illinois. Claimant called from Columbus, Ohio, stating that he had gone there to get a complete medical examination. In response to Sacheck's question, Claimant said that he expected to be off a couple of weeks. Sacheck advised Claimant that if he did not expect to return by the end of the month, he would need a leave of absence to protect his seniority. Claimant replied that he did not need a leave since he would return by the end of the month. On November 25 he was examined by his physician in Columbus and on the following day Claimant requested that leave of absence forms be sent to him in Ohio. The forms were sent to Claimant who filled them out and returned them postmarked December 5. **Sacheck received** the papers on December 8. The leave of absence request was based on medical reasons but the necessary medical documentation was missing. On December 4, Claimant was dropped from the seniority roster for absenting himself for a full calendar month without obtaining a leave of absence in accordance with Rule 23. Said Rule reads, in pertinent part:

"Rule No. 23 - Formal Leave of Absence - Voluntary
Absence From Work

(a) Leaves of absence for a period of a full calendar month or more must be formally authorized in writing, copy of same to be furnished to **employee**, Division and General Chairman and be made a matter of record....

(c1 **Employees** will forfeit their seniority rights when they fail to report for duty at the expiration of leave of absence, except when failure to so report is the result of an unavoidable delay, and leave of absence is extended by agreement between the Officer in Charge of Labor Relations and the General Chairman to include such delay."

The Organization argues that Carrier failed to comply with Rule 26 by refusing to grant Claimant's request for a leave, The relevant portion of Rule 26 states:

"Rule No. 26 - Leave of Absence - Sickness, Physical
Disability, Military Service. Schooling

(a1 An employee absent from work because of sickness, personal injury **or** other disability of himself or immediate member of his family, shall notify his supervising officer as early as possible. Such absences for a full month must be covered by formal leave of absence as per Rule 23."

The Organization alleges a further violation of Rule 21, Discipline and Investigation, because the Carrier disciplined **Claimant** without giving him a fair and impartial investigation as required by the Rule.

The Organization's position is that by advising his supervisor of his illness on October 31st, "as early as possible", Claimant complied with Rule 26. The Organization contends that Claimant had a right to wait until he knew the results of his examination on November 25 before he applied for a leave. Carrier acted prematurely when it removed Claimant from the roster on December 4. Carrier would only be privileged to take such action if Claimant had not acted promptly or had failed to act after he found out on November 25 that he could not return to work before a full month had expired.

Carrier argues that it could have invoked the disciplinary procedures under Rule 21, but it was not mandatory in this case. By absenting himself for a full calendar month without affording himself the protection of a leave of absence, in effect Claimant abandoned his employment and could be automatically dropped from the roster without recourse to Rule 21. Third Division Award 12993 - Hall, supports this position. "An employee removing himself from a Carrier's service by his own voluntary act cannot be held to be discharged from such service by Carrier as a disciplinary act." See also Second Division Award 8894 involving this Carrier.

Carrier points out that during his 4 1/2 year tenure Claimant had received seven leaves of absence some of which were extended upon their expiration. **Claimant was, therefore,** well aware that a leave of absence was necessary and he knew how to procure one.

A careful review of the record fails to reveal **any** reason for the delay between the telephone call of November 9, when Claimant was admonished to obtain a leave by the end of the month, and his medical examination on November 25. Likewise there is no explanation for the Claimant's failure to supply the documentation necessary to support the application for the leave which Claimant ultimately mailed on December 5. In a case involving the interpretation of language similar to that in Rule 23, this Board held (Award 18789 - **Franden**) that "... the Claimant must do more than allege unavoidable delay to **come** under the exception* in paragraph (cl. Since Claimant failed to sustain his burden of proof the claim must be denied. In view of the disposition of this case it is unnecessary to pass upon certain procedural points raised by both parties.

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 **Employee** 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:



4

Nancy J. Lever - Executive Secretary

Dated at Chicago, Illinois this 13th day of January 1984.