

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award **Number** 24681
Locket Number **MW-24512**

Robert W. McAllister, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**
(**Union** Pacific Railroad Company

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

(1) The Agreement was violated when the Carrier improperly terminated its employment of Foreman R. O. Jones on October 20, 1980 (System File 6-22-11-14-55/013-210-J).

(2) The claimant shall be reinstated with seniority and all other rights unimpaired and he shall be **compensated** for all wage loss suffered.

OPINION OF BOARD: On October 20, 1980, the **Claimant**, R. O. Jones, who began service with the Carrier on June 19, 1975, was informed by letter that by **reason** of his being absent from duty for five (5) consecutive **working** days, he was considered to have voluntarily forfeited his **seniority** rights and **employment**. The background of the Claimant's removal under Rule 48 (k) began in March of 1978 when he **sustained** an on-the-job injury while riding as a **passenger in a Carrier** vehicle when that vehicle slid off the road and overturned. In the period **between** that accident and the time of the action taken by the Carrier **under** Rule 48 (k) on October 20, 1980, the Claimant was seen by a number of physicians to whom he complained of neck pain.

According to the Organization, the Claimant's on-the-job injury required him to receive extensive periodic medical treatment for the pain and effects of that injury. The Organization contends the Claimant was undergoing treatment by Dr. J. F. **Hofmeister** during the five day period, October 13 through October 17, 1980, and that Dr. **Hofmeister** released the Claimant on October 19, 1980, to return to work the next day. Furthermore, **it is** asserted the Claimant notified the **Carrier** of his absence and gave a **reason** for each one of the days in question.

Rule 48 (k) reads as follows:

***Employees** absenting themselves from their assignments for five (5) consecutive working days without proper authority shall be considered as voluntarily forfeiting their seniority rights and employment relationship, unless justifiable reason is shown as to why proper authority was not obtained.

Despite the Organization's inference that, by calling in, the Claimant met the provisions of Rule 48 (k), the record does not establish the Claimant received or obtained authority to be absent. In on-the-property handling, the Claimant's deplorable absentee record for the period April 1 through October 17 was discussed. The Carrier's statements concerning the Claimant's calls on October 13, 14, 15, 16, 17 and, specifically, that the Claimant was given no authority to be absent are not rebutted by any substantial evidence. Close examination of Dr. Hofmeister's medical statement discloses it neither refers to the Claimant's health during the period of time in question nor indicates the Claimant was under treatment on any one of the five days (October 13 through October 17).

This Board has consistently held that rules, such as 48 (k), are not disciplinary in nature. Rather, they are self-invoking which results in an employee's voluntary forfeiture of seniority. The record establishes the Claimant was not authorized to be absent and presented no substantial evidence to justify his absences. We find the record supports the Carrier's actions and, considering all the evidence, this Board has no basis to disturb the Carrier's finding.

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:


Nancy J. Dover-Executive Secretary

Dated at Chicago, Illinois this 24th day of February, 1984

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