NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 24713

THIRD DIVISION Docket Number CL-24960

Tedford E. Schoonover, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes

(Illinois Central Gulf Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9699) that:

1. The Company violated the Agreement between the Parties when Clerk D. A. Clifton was removed from service of the Company.

2. Company now be required to return Claimant to the service of the Company, with compensation for all time lost and all rights unimpaired, commencing February 19, 1982.

3. Joint check of payroll records is requested by employes to ascertain amount due Claimant.

OPINION OF BOARD: Under date of February 3, 1982, Claimant was granted a Leave of Absence covering the period January 1, 1982 to 12:01 AM February 15, 1982 account family illness. The specific conditions in granting the leave were stated as follows:

> "Leave of absence (or extension) covering period January 1, 1982, to 12:01am, February 15, 1982, acct. family illness,
> (reason for leave)
> is granted and you are hereby notified that your seniority rights will be protected during your absence only to the extent permissible and proper under the terms of agreement(s) in effect between this railroad and the authorized representative of employes of your craft or class for the purpose of the Railway Labor Act.
>
> Leave is granted with the understanding that on or before February 15, 1982, you will either return to actual service or furnish acceptable medical or other evidence as proof that your continued absence is necessary. Failure to comply will result in termination of your seniority rights with this company. Request for extension, if submitted, should be forwarded to reach this office at least one week before expiration date.
>
> Before resuming work you must pass examination given by company doctor with release from your physician giving diagnosis, treatment and restrictions of activity, if any. Necessary forms can be secured from my clerk."

Under date of February 19, 1982, in recognition of failure of Clerk Clifton to return from her authorized leave of absence on February 15, 1982, Carrier sent her the following:

"In accordance with Rule 13, paragraph (f) of the 1974 BRAC Agreement, this is to advise that your seniority with the Illinois Central Gulf Railroad is terminated and you are considered to have resigned as a result of your failure to properly return to actual service at the completion of your leave of absence on February 15, 1982, as covered in my letter to you on February 3, 1982, when you were granted a leave of absence due to family illness."

Leaves of Absence are regulated by Rule 13 of the labor agreement. Paragraph 13 (f) thereof is cited by the Carrier in support of its position that Claimant forfeited her seniority when she failed to report for duty at the expiration of her leave. This paragraph provides:

"(f) Employees will forfeit their seniority and be considered as having resigned from the service if they fail to report for duty at the expiration of leave of absence (or vacation), except when failure to report is the result of an unavoidable delay."

Petitioner argues that Rule 14 is controlling in this case. Close examination of that rule, however, shows it does not cover the point at issue here. Rule 14 provides that employees returning from leave are allowed five days to place themselves on jobs in accordance with their seniority. This provision clearly is not applicable in this situation. In the first place, Claimant did not return from leave. That is the essential point of this case. Secondly, she was an extra clerk with no regular assignment and was called only when needed to fill a vacancy.

Rule 13(f) covers a different situation in that it clearly provides that employees forfeit their seniority and will be considered as having resigned if they fail to report for duty at the expiration of leave of absence. The only exception is where the failure is due to unavoidable delay. Such a condition did not apply here. Her problem was illness in the family for which she wanted an extension of her leave. But her efforts to inform proper authority of the Carrier were limited to trying to call by telephone during the final days before her leave expired. While we may sympathize with Claimant's problems at home she also had an important obligation with the Carrier in protecting her seniority rights. In plain fact she failed to take proper action as required by Paragraph 13 (f) which, by its very specific terms, is self executing in the matter of forfeiting seniority.

Evidence shows Claimant had been on leave since June 5, 1981 when she was granted maternity leave. She was advised during the period of that leave that her seniority would be terminated if she failed to return to work by September 30, or provided acceptable medical evidence that an extension of her leave was necessary. Acting on that advice she arranged for her leave to be extended until January 1, 1982. Although she did not return to work on January 1, she advised Trainmaster Bragg she would need an extension of her leave because her child was ill. She was advised she would need to provide medical evidence of the illness. A statement to this effect, dated January 11, was provided. Although Carrier questioned its authenticity it was accepted. Subsequently Claimant requested an extension of her leave. She did so by letter dated January 18 but it was not received until January 28, some 28 days after her leave had expired on January 1. Although the self executing provisions of Paragraph 13 (f) could have been effectuated at that time the Carrier did not

take such action in view of the illness claim. Instead, Carrier granted a 45-day extension of the leave, covering the period back to January 1 and forward until February 15 in order to allow Claimant to resolve her personal problems. The extension letter dated February 3, which is quoted above, specifically stated that failure to comply with its terms would result in termination of seniority.

Thus, during the period of the last leave extension, Claimant was under not only the general restrictions of Paragraph 13 (f) but also the additional specific restrictions of the letter of February 3. She failed to comply with any of these conditions. Her stated efforts to telephone Trainmaster Bragg does not constitute compliance and thus the Carrier was fully within its rights in effectuating the forfeiture provisions.

Both the Brotherhood and the Carrier have referred to Third Division Award 22159 in their submissions as being similar to this case. In view of this and also the fact that case involved the same parties on this same Carrier that award has been carefully reviewed in our considerations. Although the circumstances are obviously different the principle is essentially the same in that the problem involved an. employee who failed to return from a leave of absence on time. In that case Referee Weiss held Rule 13 (f) to be controlling and since the circumstances are similar we quote as follows from his award:

> "It seems clear to us that Rule 13(f) applies to the facts of this case; that Petitioner did not supply clear and convincing evidence either that claimant was unable to report for work at the end of his authorized leave of absence because of continued physical disability or that he had requested an extension of his leave of absence, or that he was unavoidably detained in reporting. As we read Rule 13(f), only under these conditions could claimant avoid forfeiting his seniority, however, unfortunate the results might be for his employment status. 'Unavoidable delay' is the only exception recognized in the Rule; the language is clear and unambiguous. Failure to submit probative evidence that the delay in reporting for duty on the requisite date was unavoidable, causes employes to 'forfeit their seniority and be considered as having resigned from the service' under the clear and express terms of the rule. Petitioner supplied no reason for Claimant's 7 day delay in reporting on April 1, other than the bare assertion that Claimant could not see his doctor until April 7. Such a statement is not evidence and is not supported by fact. Mere assertions do not sustain a claim."

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 Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Raiiway 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. Dever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of March, 1984.