

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25648
Docket Number MW-25710

John W. Gaines, Referee

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation

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

(1) The Carrier violated the Agreement when it improperly closed the **service** record of **Trackman M. A. McManus** as of November 15, 1982 (System Docket CR-127).

(2) The Claimant shall be returned to service with **seniority** and all other rights unimpaired and he shall be compensated for all wage **loss** suffered.

OPINION OF BOARD: Claimant was incarcerated for one of the more serious and endangering offenses -- drinking and driving. He was sentenced to 45 days, beginning October 20, 1982; his release, somewhat early, was on **November** 24, 1982, according to correspondence in the record. Meantime, by certified mail under date of November 15, 1982, and addressed to Claimant, Carrier sent out a letter stating:

"You have been absent from work without permission since October 25, 1982.

'In accordance with Rule 28 of the Agreement between Consolidated Rail Corporation and the Brotherhood of Maintenance of Way **Employees** dated February 1, 1982, your **name** is being removed from all seniority rosters and your record with Conrail closed."

Rule 28 of the Agreement, at the center of the controversy here, reads:

"(a) An employee unable to report for any reason must notify his supervisor as soon as possible.

"(b) Except for **sickness** or disability, or under circumstances beyond his control, an employee who is absent in excess of fourteen (14) **consecutive** days without receiving permission from his supervisor will forfeit all seniority under this Agreement..."

Claimant's confinement here was in consequence of his own illegal action. It does not excuse the 35 days' time of absence, without permission, that it took Claimant to give first notification and some explanation such as an acceptable justification offered to Carrier to account for his whereabouts. The acceptable answer to be found, if at all, lies in Rule 28.

In particular, our attention is invited to the **"sickness"** circumstances and to the **"beyond control"** circumstances, made as exceptions to Rule 28, on **the organization's** premise that Claimant **if** he qualifies as a stated exception will **not forfeit seniority**. The Organization makes the arguments that, first, alcoholism is a **recognized** illness and, second, being arrested and serving out time in confinement for driving while under influence of the alcohol is a circumstance beyond the control of **someone** who when alcohol-intoxicated then chooses to drive. We do not find the arguments persuasive that Claimant fits in as an exception and that **sickness** or circumstances beyond his control were the cause or causes of Claimant's absence. As stated, it was his own personal conduct, violation of the law, that was avoidable and **that made for the situation** which resulted in the **unauthorized absence**.

When the exceptions as provided for in the Rule do not apply, Rule 28 is practically self-executing in its provision that a **Employee** who is absent in excess of fourteen **(14)** consecutive days without **receiving permission from his Supervisor** will forfeit all seniority. Both sections, **(a)** and **(b)**, require affirmative action of Claimant with the promptness specified, and assuredly timely action by Claimant **if** he desires to **maintain seniority** under 28(b). Claimant alleges that, on some date intervening but **unspecified**, he was by then signed up for sickness benefits; being signed up for benefits is no substitute for notifying the Supervisor or seeking and obtaining his permission for a 35 day absence within the first 14 days thereof.

We will deny the claim. **Carrier** could validly close out Claimant from its seniority rosters and close his service record when so specifically authorized, and Carrier properly did so under the authorization it found in the **Agreement** under Rule 28.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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

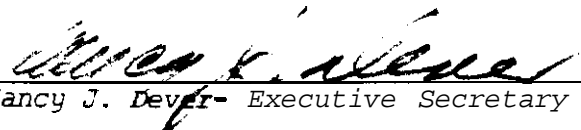
That the Agreement was not violated.

A h' 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 30th day of September 1985.

