

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25662
Docket Number MS-25866

Hyman Cohen, Referee

(James C. Kane

PARTIES TO DISPUTE: (

(Indiana Harbor Belt Railroad Company

STATEMENT OF CLAIM:

"...claim from and on behalf of the undersigned for any and all loss of wages, seniority standing, vacation payments, Railroad Retirement Benefits and/or Credits, Health and Welfare Plan and Dental Plan Benefits sustained by the undersigned when Carrier violated the Signalmens Agreement. as amended, particularly Rules 31 and 33, when Mr. Bruckman failed to return to service within 14 consecutive calendar days after being notified in writing by your letter dated March 24, 1983, to return for permanent position of Signal Maintainer, Bulletin No. 1."

OPINION OF BOARD: Signal Maintainer L. A. Bruckman was a furloughed Signal Maintainer as of January 26, 1983. On March 24, 1983 Mr. Bruckman was notified by Signal Supervisor Brown that a permanent position was available as "Signal Maintainer at Blue Island Hump". Signal Supervisor Brown also advised Mr. Bruckman that he must return within fourteen (14) calendar days or forfeit his seniority. On March 30, Mr. Bruckman acknowledged receipt of Signal Supervisor Brown's letter and requested six (6) months leave of absence to attend a Community College. Since Mr. Bruckman was not a veteran who would be eligible for a leave of absence to attend school, he was not granted the leave of absence. The Carrier and Organization then arrived at an understanding whereby Mr. Bruckman would be granted a thirty (30) day leave of absence while the Carrier investigated his request under Rule 33 (the "furlough" rule). On April 12, 1983, Signal Supervisor Brown granted Mr. Bruckman a thirty (30) day leave of absence, instructing him to return for a permanent position by April 25, 1983.

On April 22, 1983, General Chairman Parker filed a claim in which he asserted that the Carrier violated the Agreement between the parties when it denied Mr. Bruckman a six (6) month leave of absence. The Organization's position in filing the claim was that since the Carrier had other qualified people available who were furloughed to fill the position of Mr. Bruckman, the Carrier was required to grant the leave of absence because Rule 31 provides when requirements of service permit an employe will be granted leave; and that the granting of such leave would not harm the Carrier. On May 11, 1983, the conference took place between the parties to discuss the claim that was filed. At this conference, the Carrier was advised that Mr. Bruckman was not only attending school but was working elsewhere. Since this was a violation of the Agreement a Memorandum of Agreement dated May 12, 1983 was entered into between the Carrier and the Organization which included the following terms: a) Mr. Bruckman was denied a leave of absence; b) Mr.

Bruckman was to be advised by Signal Supervisor Brown that he must return to service within ten (10) days or forfeit his seniority, and c) **** any time claims and grievances which may develop from junior C&S employees who may be effected by Mr. Bruckman's return to service will not be progressed against the Carrier". On May 12, 1983, Signal Supervisor Brown wrote Mr. Bruckman advising him to exercise his seniority within ten (10) calendar days or forfeit his seniority. On May 14, 1983, Mr. Bruckman notified the Carrier that he would exercise his seniority by displacing a junior employe on the "Blue Island Hump".

The instant claim asserts a violation of the Agreement when Mr. Bruckman failed to return to service within fourteen (14) days after being notified by the Carrier to return to the permanent position of Signal Maintainer.

Contrary to the position of the Petitioner, his claim was properly denied by Signal Supervisor Brown in his June 10, 1983 letter to Assistant Signal Mechanic Kane when he stated that "due to the circumstances surrounding this case, an agreement was executed on behalf of the Organization and Carrier which provided that "any time claims and grievances which may develop from junior C&S employees who may be effected by Mr. Bruckman's return to service will not be progressed against the Carrier." In his letter, Signal Supervisor Brown also added, "Therefore, your claim is denied in its entirety.* Furthermore, by his letter setting forth the reasons for his denial, the Carrier complied with Article V 1(a) by disallowing the claim within 60 days of the date of the filing of the claim (April 27, 1983) and stating the reasons for such disallowance.

The Organization contends that since the .*** appealed claim was not denied by the Carrier within sixty days from the date the claim was appealed *** the claim should be allowed as presented." There is no merit in this claim as indicated by W. D. Goodwin, Engineer Communications and Signals who stated in his September 22, 1983 letter to Assistant Signal Mechanic Kane that since the May 12, 1983 Agreement was executed at the "authority level indicated" (between General Chairman Parker and J. D. Ditto, Director of Labor Relations and Personnel), he was "not in a position to act as appeal officer:

Furthermore, in a letter to Signal Engineer Goodwin, dated October 20, 1983, Assistant Signal Mechanic Kane stated that the **** claim was not denied by you in writing within sixty days • **: The failure to cite a rule in support of this claim is fatal to the position of the Claimant. In addition, J. D. Ditto, Director of Labor Relations and Personnel, properly declined the instant claim in a letter, dated November 29, 1983, addressed to General Chairman Parker, referring to the May 12, 1983 Agreement as the reasons for the denial.

Turning to the merits, an understanding was reached with the Organization whereby Mr. **Bruckman** was granted a thirty (30) day leave of absence, instead of the six (6) months leave of absence he requested to attend Community College. The understanding on the thirty (30) day leave of absence was granted while the Carrier investigated Mr. **Bruckman's** request for a six (6) month leave of absence in light of the furlough rule, Rule 33. After the Carrier discovered that **Mr. Bruckman** was employed elsewhere, Mr. **Bruckman** was notified that he had ten (10) days to report for service. Under the circumstances neither Rule 31 which covers leave of absence, nor Rule 33 were violated by the Carrier.

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 W A R D

Claim denied.

NATIONAL RAILROAD **ADJUSTMENT** BOARD
By Order of Third Division

Attest:


Nancy J. Leves - Executive Secretary

Dated at Chicago, Illinois, **this** 28th day of October 1985.