

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26015
Docket Number MS-26433

John W. Gaines, Referee

PARTIES TO DISPUTE: (Carlos Sandoval
(
(The Texas Mexican Railway Company

STATEMENT OF CLAIM:

"Did the Texas Mexican Railway Company violate Rule 19 of the Collective Bargaining Agreement that on or about January 1, 1984 they refused to allow Carlos Sandoval a leave of absence after a furlough period? Further, did The Texas Mexican Railway Company further violate the Collective Bargaining Agreement on August 20, 1984 by stripping Sandoval's seniority and thereby effectively terminating him from employment at The Texas Railway Company?"

OPINION OF BOARD: Carrier submits that both Claims above are covered by Rule 29.

In response to Claimant's request for 90-day leave after furlough, Carrier pointed to exigencies of the service dictating refusal because he could not be spared from the work force. No Rule called to our attention is violated. Rather, Rule 29 entitled "LEAVE OF ABSENCE", Paragraph (d) is in point, expressly making the grant of the employees' leave-taking conditional upon "when they can be spared."

Now we turn to the second Claim. Rule 29(a) explicitly provides that the "... (e)mloyee remaining away from service except in cases of accident or sickness without proper leave of absence will forfeit his seniority." Claimant made his election to remain away from service on and after August 15, 1984; when he voluntarily did so it was automatically at the expense of termination and forfeiture of his seniority.

The present Claims are without merit.

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.

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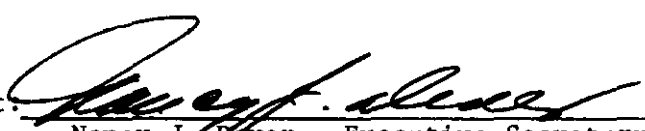
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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of May 1986.

