

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26237
Docket Number MS-26507

Edwin H. Be"", Referee

(Bruce W. Hampton

PARTIES TO DISPUTE: (

(The Chesapeake and Ohio Railway Company

STATEMENT OF CLAIM:

"I am appealing my claim CC 426, Clerk Grievance Item 19007, to you because Rule 27 was not used in this case. Rule 27 states, in part, 'An employee who has been in the **service** sixty **(60)** days **or** more, whose application has been approved, will not be disciplined **or** dismissed without investigation.' This was not done, only a co-called (sic) seniority hearing was held in Baltimore, Maryland, on April 21, 1982, by a panel of Chesapeake and Ohio Railway Company chose" people and my seniority was take" away by their decision.

"I was still on the roster as an employee and was also still a paid up member of the BRAC union. I was not given a warning shot, so to speak, before I received the letter dated March 9, 1982 from J. E. **Snead**, Assistant to Manager of Chesapeake and Ohio Railway Company at Columbus, Ohio, informing me that I had violated the Clerk's Agreement, that I had forfeited my seniority and that a hearing had been scheduled.

"I am appealing this to you because I feel that this was unjust and unfair. I would like to return to work as **soon** as possible. I think my seniority should be reestablished and I should be give" the opportunity to return to work."

OPINION OF BOARD: Claimant was employed in a clerical position at the Carrier's Computer Operations Center **in** Baltimore, Maryland.

On May 17, 1977, Claimant left his assignment without marking off or informing anyone in authority of his reason for leaving. On May 18, 1977, Claimant called the Computer Operations Center and formally marked off sick. On May 19, 1977. Claimant was informed that **in** accord with the agreed upon interpretation of Rule 60 of the Agreement, he would not be eligible for sick payments until a Certificate from a reputable physician was furnished to substantiate his illness. Thereafter, Claimant did not return to work.

On July 21, 1977, the Carrier wrote Claimant and advised Claimant that his position was being bulletined due to his prolonged absence. Information was also requested concerning Claimant's status and plans for returning. Further, Claimant was also advised that a Certificate from a reputable physician would be required upon his return. No response was received. On February 1, 1978, the Carrier again wrote Claimant inquiring about his status.

Claimant responded stating that "My status is I am still off sick and will remain so until you are notified otherwise." On March 28, 1979, the Organization inquired concerning Claimant's sick pay entitlements. The carrier responded on May 4, 1979 declining the request and advising the Organization of Claimant's failure to present a doctor's Certificate. The Carrier further sought information concerning Claimant's whereabouts and address of record since there was some doubt whether Claimant still resided in the Baltimore area. On May 17, 1979, the Carrier's Chief Medical Officer, Dr. G. M. Carouge, sent Claimant a letter at his last known address advising Claimant to report for a physical examination. The letter was returned and marked "Moved, not forwardable." On June 1, 1979, Dr. Carouge wrote Claimant at an Ohio address notifying him to report for physical examination in Columbus, Ohio on June 20, 1979. Claimant was also advised that failure to report could cause his name to be removed from the Seniority Roster. Claimant received the letter, but failed to report for the physical.

No contact was had with Claimant for almost two years when, on June 4, 1981, Claimant wrote the Carrier at Columbus, Ohio stating that he wished to return to work. On February 2, 1982, Claimant wrote the Carrier's Chief Clerk seeking a list of jobs up for bid in the Columbus and Toledo vicinity. On March 9, 1982, the Carrier's Division Manager advised Claimant that he failed to protect his seniority under the applicable Agreement and that his seniority had been forfeited. A "Show Cause" Hearing was then scheduled to permit Claimant to present evidence concerning the forfeiture.

The record of the Hearing held on April 21, 1982 demonstrates that Claimant failed to obtain a leave of absence, and further failed to satisfactorily substantiate his illness. Claimant further admitted that he did not seek medical treatment as he did not believe in doctors and did not feel that it was necessary to respond to the instructions to report for a physical examination.

On May 4, 1982, Claimant was advised by the Carrier that its prior decision of forfeiture of seniority would stand.

After a careful review of the record, we are satisfied that Claimant has offered no satisfactory justification for setting aside the Carrier's determination that Claimant forfeited his seniority. Although the Carrier requested on numerous occasions that he do so, Claimant refused to submit appropriate documentation concerning his asserted illness. The record clearly demonstrates that Claimant left the service without obtaining a leave of absence. Under Rule 3(f) of the Agreement ("**Employees** leaving the service without leave of absence will forfeit all seniority . . ."). Claimant clearly forfeited his seniority. Claimant was given more than a reasonable opportunity to substantiate his illness and he did not satisfactorily do so. The Rules relied upon by Claimant are therefore not applicable since Claimant cannot be considered absent due to illness or injury. Finally, no showing has been made that the Carrier utilized incorrect hearing procedures in upholding the determination that Claimant forfeited his seniority.

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

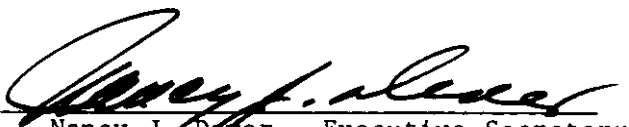
That the Agreement was not violated.

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 27th day of February 1987.