

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26591
Docket Number X-27002

John E. Cloney, Referee

(Brotherhood of Railroad Signalmen
PARTIES OF DISPUTE: (
(Elgin, Joliet and Eastern Railway Company

STATEMENT OF CLAIM:

"a. Carrier violated the parties' Scheduled Agreement, as amended, particularly Rules 90, 49 and 81, when, on or about April 26, 1985, Mr. Roy A. Sneffner, Manager Signals Communications and Electrical Facilities, denied Claimant's request for a leave of absence to continue working as a signalman for the Chicago Union Station when there were qualified furloughed employees available to Carrier.

b. As a consequence of such action, Carrier be required to reinstate Claimant I. Panepinto, Jr., with seniority and all other rights unimpaired and make him whole for all wage loss suffered, if any. Carrier File: 144-113. General Chairman File: **85-24-EJE.**"

OPINION OF BOARD On December 21, 1984, Carrier abolished several positions, including that of Claimant who then took the required steps to retain his seniority rights.

On April 12, 1985, Carrier advertised the position of Leading Signalman at Joliet, Illinois. By letter of April 16, 1985, Claimant bid on the Joliet position noting he considered receipt of the bulletin as notice of reasonably continuous employment under the Agreement. By bulletin of April 23, 1985, the position was awarded to another.

By letter of April 24, 1985, Claimant requested a 90 day of leave of absence stating:

"I am currently employed as a signalman with Chicago Union Station. And, would like to continue in this position temporarily, I want to continue my permanent employment with (the carrier)."

By bulletin of April 24, 1985, the Carrier advertised a Leading Signalman position at Gary, Indiana. The wording was substantially similar to that of the earlier bulletin.

On April 26, 1985, the Manager Signals Communications wrote Claimant advising:

. . . you do not need a leave of absence to work elsewhere because you have been in a furloughed status . . . and your seniority is presently being accumulated "

On April 30, 1985, Claimant wrote ~~the~~ Carrier that if the April 24, 1985, bulletin was notice of reasonably continuous employment:

"Then I would have to return on this position or forfeit my seniority . . . I am therefore asking for this leave of absence . . . so that I may continue working at Chicago Union Station without forfeiting my Leading Signalman's seniority,"

On May 3, 1985, the Organization wrote the Carrier quoting Third Division Award 23124 which, it felt, required Carrier to grant Claimant's requested leave.

By bulletin of May 10, 1985, the Gary position was assigned to Claimant. By letter of May 13, 1985, the Carrier so notified Claimant. The letter advised:

"If you fail to report for duty within ten (10) calendar days after the date notified you will forfeit all seniority rights as provided in Rule 46 (b) and Rule 49"

By letter of ~~May~~ 15, 1985, the Carrier notified the Organization:

. . . I could not recommend waiving Rule 92 to grant a leave of absence . . . under the present facts and circumstances."

On May 16, 1985, Claimant again wrote the Carrier. He referred to his two previous letters as well as the Organization's May 3, 1985, letter to the Carrier. The Claimant stated:

"I am still waiting your decision on this request and would appreciate your response to this request as soon as possible."

On May 29, 1985, the Organization wrote the Carrier contending that although **Claimant's** request was for a Leave of Absence to work elsewhere Rule 90 applies and since there were several other qualified employees available refusal to grant the leave would violate the Agreement. It further contended Rule 46(b) did not apply. The Organization stated that a Claim would be filed if Claimant's name was removed from the seniority roster or if leave was not granted. The Organization took the position removal of Claimant's name while a grievance was pending would violate Rule 81.

On May 29, 1985, the Carrier notified Claimant that as he had not reported:

"Per Rule 46(b) and Rule 49 . . . you have forfeited all seniority"

Various Rules which may be applicable state in pertinent part:

"Rule 48

(e) Reasonably continuous employment as used in this agreement shall be understood to mean that full time employment is available, as afforded the regular assigned forces, for a period of not less than three (3) months.

Rule 49

. . . Failure . . . to return to the service within ten (10) calendar days after being notified by the management of reasonably continuous employment being available will cause forfeiture of all seniority rights unless a leave of absence has been obtained under the provisions of Rule 90

Rule 81

Prior to the assertion of grievances as herein provided and while questions of grievances are pending, there **will** neither be a shut down by the employer nor a suspension of work by the employees.

Rule 90(a)

Employees who have been in the service one (1) year or more will upon request be granted a leave of absence not to exceed ninety (90) days when the requirements of the service permit

Rule 92

An **employee** who lays off to engage in gainful employment elsewhere, without written permission from the Carrier, whether on leave of absence or not, will lose his seniority."

The Organization contends Carrier's refusal to grant Claimant a leave of absence, without stating reasons why it could not, violated Rule 90. It further argues Carrier's letter of May 13, 1985, did not constitute a guarantee of "reasonable continuous employment" within the meaning of Rule 49. The Organization also views Rule 81 as requiring that any action should have been postponed pending appeal of the dispute regarding the leave of absence. The Organization also notes Claimant was never directly notified by Carrier that his request was denied.

This Board has carefully considered the positions advanced by the Organization. Whether or not Rule 90(a) requires Carrier to establish "the requirement of the service" do not permit granting a leave of absence in any specific case we note Claimant's request stated the purpose was to work other employment. Pursuant to Rule 92, working elsewhere requires written permission of the Carrier. This, Claimant never obtained.

Claimant's April 30, 1985, letter clearly indicates he understood the Gary position bulletin to be "written notice of reasonably continuous employment" as he had previously considered the **Joliet** position bulletin. While the **record** does not **disclose** Claimant was ever directly notified his request was denied the Organization was notified and Claimant's May 16, 1985, letter, which refers to the Organization's letter assures us he **was** aware there was controversy over the request. He acted at his peril when he failed to report to Gary. The principle, often stated, is "comply and grieve." This Board has been directed to no case in which an exception to this principle has been found to exist based upon the effect compliance would have upon third party relationships. We believe there is none. If Claimant had reported to the Gary position it is almost certain he would have had to relinquish the Chicago Union Station position. This is unfortunate from one point of view but **Claimant**, who receives the benefits of the Agreement, also is bound by its terms. Self help can only result in industrial chaos. Thus, whatever the merits of the question regarding a leave of absence, Claimant was not free to fail to report to Gary if he wished to retain his seniority.

Nor can we agree that Rule 81 is applicable. It was Claimant who did not report. As was stated in Third Division Award 12993:

"An employee removing himself from a Carrier's service by his own voluntary act cannot be held to have been discharged from such service by Carrier **as a disciplinary act.**"

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 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. **Dever** - Executive Secretary

Dated at Chicago, Illinois, this 27th day of October 1987.