

The Third Division consisted of the regular members and in addition Referee John E. Cloney when award was rendered.

PARTIES TO DISPUTE: ( Brotherhood of Maintenance of Way Employes  
( Union Pacific Railroad Company

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

(1) The Agreement was violated when the Carrier improperly closed the service record of Steel Bridgeman Welder D. L. Means (System File D-65/013-210-48).

(2) The claimant shall be reinstated with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered as a consequence of the violation referred to in Part (1) hereof."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimant was involved in an automobile accident on the way to work on January 8, 1986. He worked that day and part of January 9, being released two hours early for a medical examination. He was given Friday, January 10, off as a personal leave day. On Saturday, January 11, he asked his Supervisor for time off. It is unclear whether the request was made for medical reasons or for purposes of conducting business related to the accident but the Supervisor told Claimant he would not be allowed time off for personal reasons but would be given off January 13 through 17, 1986, for medical reasons.

Claimant did not report or contact Carrier on January 20 through 24, 1986, and on January 24, he was notified by letter:

"This is to advise that the Company's records indicate that you have been absent from the service without proper authority for the following five (5) consecutive workday period:

January 20, 21, 22, 23 and 24, 1986

Rule 48(k) of the Agreement between the Carrier and the Organization reads as follows:

Employees absenting themselves from their assignments for five (5) consecutive days without proper authority shall be considered as voluntarily forfeiting their seniority rights and employment relationship, unless justifiable reason is shown as to why proper authority was not obtained."

On January 25, 1986, the Supervisor contacted Claimant's physician. He was told Claimant had changed a January 18 appointment to January 20 and would next be seen on January 27. He asked the doctor to have Claimant call him.

During handling on the property, medical reports were furnished including the following dated March 10, 1986 from Claimant's Doctor:

"David Means has been under my treatment following an accident. On January 20 I prescribed Percet - 5 for him for control of pain. He took the medication as prescribed for approximately four days time, and I advised him that while on the medication, he should not work around machinery, and he was therefore unable to work from January 20 through January 24."

Claimant requested a conference which was scheduled for February 18, 1986, however he was taking a vacation from February 15 to March 2 so the conference was rescheduled for March 8.

Records introduced on the property show Claimant, who entered service in 1971, had been granted a Leave of Absence from January 3, 1978, to February 3, 1978, which was extended monthly until September 3, 1978. The record further reflects Leaves of Absence from June 12, 1979, to July 13, 1979; from May 28, 1981, to June 28, 1981; from September 13, 1982, to October 13, 1982, extended to November 1, 1982; and from November 5, 1983, to December 4, 1983, extended monthly to November 28, 1984.

The Organization argues Claimant's inability to work was documented and this constituted a "justifiable reason" within the meaning of Rule 48(k). It is clear the justifiable reason provision of 48(k) refers to "why proper authority was not obtained" rather than to ability to perform work. The Organization also contends the March 10, 1986 letter from Claimant's Doctor infers Claimant's decision-making abilities were impaired and this too constituted a justifiable reason. This Board is unable to interpret the Doctor's statement in such a strained manner.

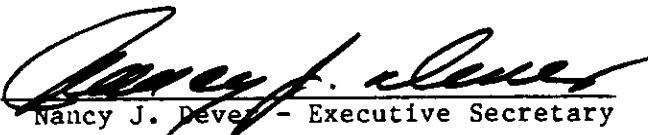
Claimant was a relatively long service employee which is often a mitigating factor in discipline cases. However, we have frequently held Rule 48(k) and similar Rules are self-invoking and not disciplinary in nature. Third Division Awards 24218, 25837. We also note Claimant had several Leaves of Absence in the past, some of which were lengthy and extended on a monthly basis. Thus he knew what was required to extend his Leave.

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 16th day of October 1989.