

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29886
Docket No. MS-30308
93-3-92-3-43

The Third Division consisted of the regular members and in addition Referee Robert T. Simmelkjaer when award was rendered.

PARTIES TO DISPUTE: (Robert E. Hodge
(Union Pacific Railroad Company (former Chicago
& Eastern Illinois Railroad)

STATEMENT OF CLAIM:

"Termination after twenty-two years without an investigation and without receiving any notification of such termination. I feel a lack of communication from all parties concerned played a part in this dispute."

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 employe 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.

By Memorandum dated February 8, 1990, the Carrier Medical Director advised the Superintendent that Claimant should be granted a 60 day leave of absence effective February 7, 1990. On April 5, 1990, the Medical Director informed the Superintendent that Claimant could be returned to service effective immediately. On April 8, 1990, Claimant requested and was granted an additional 30 day leave of absence through May 8, 1990, in order to relocate closer to his job.

When Claimant's leave of absence expired on May 8, 1990, and he did not report for duty, the Manager of Track Maintenance advised him by letter dated May 15, 1990, that in accordance with Agreement Rule 33 he was "considered as having forfeited any and

all seniority with the Railroad as a result of his failure to return to duty upon the expiration of his leave of absence."

By letter dated February 27, 1991, the Claimant first wrote to the Carrier stating he had severe personal and family problems, had checked into an alcohol rehabilitation center in February 1990, for thirty days and on May 18, 1990, entered a correctional center, presumably without receiving the Carrier's May 15, 1990 letter that he had been terminated and taken off the seniority roster.

The Board has carefully reviewed the record in this case and finds that the claim is procedurally defective. When the Claimant wrote to the Carrier on February 27, 1991, it was nine months after the Carrier's letter of May 15, 1990, advising him that his seniority had been terminated. The record is devoid of any evidence that Claimant filed a timely claim with the Carrier regarding the forfeiture of his seniority as required by Agreement Rule 35. Rule 35 of the Agreement requires that all claims be filed within 60 days of occurrence of the event giving rise to the claim.

In this regard, the Board held in Third Division Award 25252:

"The Board can find nothing in the record as handled on property to negate the clear and unequivocal responsibility of Petitioner to process any such claim within sixty (60) days from the date of the occurrence on which the claim or grievance is based....

The Time Limit Rule is controlling and this Board has no jurisdiction at this date to enlarge the time within which appeals may be made...."

The Board further finds, assuming, arguendo, that it had jurisdiction over the instant matter, Rule 33 (c) pertaining to leaves of absence would apply. Rule 33 (c) clearly states:

"(c) An employe who does not return to duty upon expiration of leave of absence or submit a reasonable explanation for such failure will lose seniority and be considered out of the service."

Claimant who was on a LOA failed to return at the expiration of his leave and under the terms of Agreement Rule 33 (c) forfeited his seniority and terminated his service with the Carrier. With respect to the merits, this Board has consistently held that Rules

resulting in the automatic forfeiture of seniority are self-executing, are not considered disciplinary, and require no disciplinary hearing. In reviewing a similar Rule, the Board held in Third Division Award 24681 as follows:

"This Board has consistently held that rules, such as 48(k), are not disciplinary in nature. Rather they are self-invoking which result in an employee's voluntary forfeiture of seniority. The record establishes the Claimant was not authorized to be absent and presented no substantial evidence to justify his absences. We find the record supports the Carrier's actions and, considering all the evidence, this Board has no basis to disturb the Carrier's finding."

Finally, Claimant's reference to an Investigation pertains to an unrelated event in December 1989, where he was charged with being A.W.O.L. and, in lieu of an Investigation, signed a 15 day deferred suspension as a result of his absenteeism.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin
Catherine Loughrin Interim Secretary to the Board

Dated at Chicago, Illinois, this 26th day of October 1993.