

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31144
Docket No. MS-31812
95-3-94-3-99

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

PARTIES TO DISPUTE: (Santos Torres
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(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"Kindly accept this letter as notice as required by the rules of the National Railroad Adjustment Board of this office's representation of Mr. Santos Torres (MW-2812) and this office's intention for file on behalf of Mr. Torres an ex parte submission within thirty (30) days of the date of this notice covering an adjusted dispute between Mr. Torres and the Consolidated Rail Corporation involving a question regarding B.M.W.E. Rule 28-B and the alleged forfeiture of seniority by Mr. Torres on or about November 2, 1992 and whether or not said absence/forfeiture of seniority was for reasons of 'sickness... or under circumstances beyond his control' and thus a reasonable and permissible absence."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 were given due notice of hearing thereon.

This dispute involves the forfeiture of seniority pursuant to Rule 28(b) which reads, in pertinent part, as follows:

****(b) Except for sickness or disability, or under circumstances beyond his control, an employee who is absent in excess of fourteen (14) consecutive days without receiving permission from his supervisor will forfeit all seniority under this Agreement.****"

Claimant's last day at work was October 29, 1992. He did not notify his Supervisor either verbally or in writing as to his alleged need to be absent from work at anytime prior to receiving Carrier's letter of December 3, 1992. After receipt of the letter advising that he had forfeited his seniority under Rule 28 (b), Claimant then said he told someone else to call in and mark him off because of the sudden serious illness of his father that necessitated his traveling home to Puerto Rico.

The Carrier has refused to reinstate Claimant's seniority on the basis that he could have called or written from Puerto Rico within the fourteen day period advising of the necessity of his absence.

The Carrier's handling of this dispute is correct and proper under the Rule. Claimant has forfeited his seniority rights by not notifying his Supervisor of his need for the absence.

The Claim before the Board is denied.

For the record, it is noted that Claimant's attorney requested a Hearing before the Board. It was scheduled for 11:30 A.M., August 2, 1995. The parties waited until 12:10 P.M. before proceeding without the presence of the parties who requested the Hearing. Subsequently on August 10, 1995 the Board received a July 27, 1995 letter rescinding the Hearing request.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

Form 1
Page 3

Award No. 31144
Docket No. MS-31812
5-3-94-3-99

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 26th day of September 1995.