

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32138
Docket No. MW-31927
97-3-94-3-218**

The Third Division consisted of the regular members and in addition Referee Hyman Cohen when award was rendered.

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(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 terminated the seniority of Mr. B. B. Aparicio by letter of May 3, 1993 for alleged violation of Rule 25(g) (System File D-195/930605).**
- (2) As a consequence of the violation referred to in Part (1) above, the Claimant shall be reinstated to the Carrier's service with seniority and all other rights unimpaired, his record shall be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered beginning June 1, 1993 and continuing until he is returned to service."**

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.

By letter dated May 3, 1993 Track Supervisor Dalebout notified the Claimant that he had forfeited his seniority rights because he violated Rule 25(g) of the Agreement. Prior to his dismissal, the Claimant had been assigned to System Gang 9084 which had been working in the vicinity of Las Vegas, Nevada.

With reference to the events which led to the dismissal of the Claimant, on March 31, 1993, the Claimant's brother delivered a doctor's note to the Carrier. The note, in relevant part, stated that the Claimant was "receiving treatment for a herniated lumbar disc" and that he "is to remain on leave of absence until 6-1-93."

There was no attempt by the Claimant to contact the Carrier as he previously had been advised. On April 21, 1993, the Carrier sent a certified letter to the Claimant along with a leave of absence form and a self-addressed return envelope. The letter advised the Claimant that he had five days from receipt of the letter to return the leave of absence form or he would forfeit his seniority. He was also given an 800 number to call if he had any questions.

The Post Office returned the certified letter to the Carrier with the notation "refused." On May 4, the Organization requested that another leave of absence form be sent to the Claimant. Since the Carrier had sent the Claimant a letter on May 3 that he had violated Rule 25(g) and thus had forfeited his seniority, the Carrier rejected the request by the Organization.

In pertinent part, Rule 25(g) of the Agreement states:

"(g) Medical Leave ***

Requests for medical leave of absence account sickness or injury in excess of fifteen (15) calendar days must be made in writing and properly documented and supported by a statement from the employee's physician, which includes the specific reason therefor and the expected duration. * *."

Although the Claimant's medical leave of absence was in excess of 15 calendar days he failed to submit a request for leave in writing, as required by Rule 25(g). Under

the applicable terms of Rule 25(g) the note from the Claimant's physician does not constitute a request for medical leave.

The importance of such a request is that it enables the Carrier to determine what course of action it will take with respect to it. As stated in Second Division Award 8169:

"It is a basic concept in arbitral law that a leave of absence is not a matter of absolute right in the employee. The very nature of a leave of absence is that the Employer grants the employee such leave. The Employer's discretion in either granting or denying leaves of absence have been upheld in numerous cases. Therefore, the Carrier may deny a request for leave of absence without being required to justify its denial."

The Claimant Physician's statement is merely a doctor's note which generally is submitted by an employee in an effort to support an excused absence. Clearly, the doctor's note is not a request for medical leave as contemplated by Rule 25(g).

It is significant that the Claimant never explained why he did not contact the Carrier to request a medical leave. Furthermore, there was no explanation offered by the Claimant for the refusal to accept the Carrier's April 21, 1993 certified letter with the enclosed leave of absence form.

Although the Claimant was previously advised that if he was unable to protect his assignment, he was to call his Supervisor, he failed to do so. The failure to contact the Carrier and the failure to explain his failure to do so during the entire month of April 1993, *demonstrates an extraordinary indifference to the protection of his job.*

The Carrier exercised forbearance and restraint in dealing with the Claimant. In effect, the Carrier granted the Claimant leave for at least 15 days based upon a doctor's note which was not in compliance with Rule 25(g). The Carrier sought to bring the Claimant's leave into compliance with the Rule by sending him a certified letter and enclosing with it, the leave of absence form and a self-addressed envelope.

When the Organization contacted the Carrier on May 4, 1993, requesting another Leave of Absence form, it was too late. The Carrier had sent a letter on the previous day that he had forfeited his seniority because he was not in compliance with Rule 25(g).

As this Board has held on many occasions, the leave of Absence Rules are self-executing. See, e.g. Third Division Award 28764. Moreover, in Third Division Award 22837, the following was stated:

“* * This Board has ruled on a number of occasions that termination for failure of an employee to comply with leave of absence rules does not constitute discipline, nor does it entitle an employee to a hearing under the discipline rule. See, for example, Third Division Award 20371; Third Division Award 20426; Second Division Award 6801.”

Due to his failure to comply with the terms of Rule 25(g) forfeiture of seniority is automatic and not considered to be discipline. Accordingly, the Board has concluded that the Carrier's decision of dismissal is not to be disturbed.

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.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 13th day of August 1997.