

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32590
Docket No. MW-32141
98-3-94-3-420

The Third Division consisted of the regular members and in addition Referee Richard R. Kasher when award was rendered.

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employees
(Union Pacific Railroad Company (former Missouri
(Pacific Railroad)

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. W. C. Robinson and failed and refused to allow him to return to service following his absence for medical reasons beginning October 26, 1992 (Carrier's Files 930406 and 930594 MPR).
- (2) As a consequence of the violation referred to in Part (1) above, the Claimant shall be reinstated with seniority, vacation and all other rights unimpaired and he shall be compensated for all wage loss suffered.”

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.

The record evidence establishes that the Claimant was absent without authority beginning on October 26, 1992. On or about December 1, 1992 the Carrier notified the Claimant in writing that he would have to "show good cause" as to why his employment should not be terminated. The record further reflects that the Carrier's December 1, 1992 notice was sent by certified letter and that the letter was signed for on December 9, 1992.

It is undisputed that a telephone message was received by Ms. Viola Fults, NPS Specialist for the Carrier, on December 9, 1992 advising that the Claimant had broken his ankle in two places, and the message also left a telephone number where the Claimant presumably could be contacted. It is further undisputed that when Ms. Fults attempted to contact the Claimant at that telephone number she was advised that the Claimant "did not live there anymore."

As a result of not receiving verification from the Claimant excusing his long period of AWOL, the Carrier terminated his employment. A claim was filed challenging the termination, and the Organization also filed a "roster protest" on behalf of the Claimant subsequent to his termination.

While the Organization has argued on the Claimant's behalf that in addition to challenging the Claimant's termination the Organization also filed a roster protest subsequent to the Claimant's termination, which protest was not responded to by the Carrier, it is the finding of the Board that the Claimant was properly terminated in view of his extended period of AWOL and his failure to show cause justifying his absence. In the Board's opinion a post-termination roster protest does not provide justification for overturning the Carrier's decision to discharge the Claimant. Accordingly, the claim will be denied.

AWARD

Claim denied.

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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 22nd day of May 1998.