

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 34043
Docket No. SG-34762
00-3-98-3-439**

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

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Port Authority Trans-Hudson Corporation (PATH)**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Port Authority Trans-Hudson Corporation:

Claim on behalf of E. G. Munday for compensation at the rate of a Grand Lodge Representative of the Brotherhood of Railroad Signalmen, beginning July 14, 1997, account Carrier violated the current Signalmen’s Agreement, particularly Article VI.B.3, when it deprived the Claimant of the right to accumulate seniority corresponding to a leave of absence of more than 90 days while serving as a representative of the Brotherhood of Railroad Signalmen. BRS File Case No. 10577-PATH.”

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 Claimant is a working General Chairman of the Organization who retains seniority on the Carrier here concerned. On March 27, 1997, the Claimant advised the Carrier he would be taking a leave of absence as he would be working full time as an official for the Organization.

This full time position was in the general offices of the Organization at Mt. Prospect, Illinois. The Claimant cited a portion of Article VI.B.3.a which reads:

"However, employees on leave of absence by reason of use in an official capacity by the BRS shall accumulate PATH seniority without limitation."

The Carrier responded to the notice by stating that leaves of absences require the agreement of both PATH and the BRS. The Carrier cited and quoted from Article XIV-H, which reads:

"Upon agreement of PATH and BRS employees may be granted leaves of absences of up to ninety (90) days."

The Carrier then granted the Claimant a 90 day leave which would terminate Saturday, July 12, 1997. The Carrier further advised the Claimant that he must report back to work on Monday, July 14, 1997.

The Organization responded stating:

". . . when a leave of absence is required by a BRS representative at PATH, and that leave is for use in an official capacity by the BRS, PATH likewise has no authority to grant or deny said leave. . . ."

The Carrier remained adamant in its position, refusing to extend the leave beyond 90 days, thus the Claimant gave up the position in the general office of the Organization and did return to the Carrier. If he had not done so, he believed the Carrier would have terminated his seniority, and without BRS seniority, he could not work in an official capacity at the Organization's general headquarters.

The Organization has also alleged that the Carrier was in violation of the Railway Labor Act, Section 152.

From the outset, this Board's jurisdiction to handle grievances flows from the Railway Labor Act, and extends only to adjudication of grievances based upon an Agreement in place between the parties. This Board has no jurisdiction to interpret the provisions of the Railway Labor Act, thus the following flows solely from the interpretation of the cited Agreement Rules.

The Leave of Absence Rule is clear. It states that leaves of absences up to 90 days may be granted "upon agreement of PATH and BRS."

The Organization quotes the third sentence of Article VI.B.3.a as the basis for its agreement that leaves of absences for employees working an official position with the union shall be allowed indefinite leave.

The Board does not agree. Article VI.B.3.a cannot be cited as support for indefinite leaves by the Organization. The Leave of Absence article quoted at the outset of this Award clearly and concisely supports the Carrier. Leaves of absences up to 90 days may be granted but only with the mutual consent of the Carrier and the Organization.

In this instance, a 90 day leave was granted. The request for an indefinite leave was ignored. Obviously, the Carrier was not interested in agreeing to such a request.

The third sentence of Article VI.B.3.a has to be read in its entirety. To this Board the third sentence extends to "employees on leave of absence by reason of use in an official capacity by the BRS," the right to retain progressive class seniority beyond the 30 days up to a maximum of the leave period mutually agreed to. It cannot be interpreted to unilaterally protect an employee's seniority with the Carrier while working full time on a position for the Organization for an indefinite period of time.

The Organization attempts to inject a note of partiality by directing this Board's attention to another craft wherein an employee of that craft has been retaining seniority for some time while working full time for his Organization. In that instance, the parties have an Agreement Rule providing for such leaves. In this case, no such contract language has been agreed to that provides for the Organization the relief they seek from this Board.

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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 25th day of May, 2000.

Labor Members Dissent Third Division Award 34043 (Referee Robert L. Hicks)

The majority erred and issued an Award that is incorrect when the Referee incorporated an unreasonable exception to the Agreement and ignored the specific language negotiated by the parties.

As a historical note the Leave of Absence Agreement (Article VI.B3.a), when first negotiated, contained certain limitations regarding an employee's request for a leave of absence; first the requested leave must be granted by the carrier; and secondly the employee may accumulate seniority while on the leave up to, but not exceeding 30 days. It is noted that the language does not prohibit the Carrier from granting a leave of absence in excess of 30 days, however, the employee shall only accumulate seniority for the first 30 days.

Following the foregoing negotiated language the parties jointly agreed to extend the leave of absence period by supplementing the language in Article XIV H, which reads; "Upon agreement of PATH and BRS employees may be granted leaves of absences of up to ninety (90) days." Obviously, the negotiating parties were not as artfully articulate as they should have been, however, this Agreement language can be and should be directly tied to the provisions in the Leave of Absence Rule. It is illogical to assume that these two provisions of the Leave of Absence Rule stand alone.

The Agreement goes on to provide an exception, wherein, it states that: "However, employees on leave of absence by reason of use in an official capacity by the BRS shall accumulate PATH seniority without limitation." Obviously, this exception to the Rule implies a restriction on Carrier's right of refusal regarding the granting and or rejection of a leave of absence - when such leave is for working in an official capacity by the BRS. Additionally, this exception also applies to the restriction for continuing to accumulate seniority after the 30 day time period.

It is noted in Carrier's Submission before the Board it acknowledged that: "*The employee accrues PATH seniority for up to thirty (30) days during the leave unless he/she is being used in an official capacity by the BRS, in which case there is no limitation.*" It is the Organizations position that the phrase "...shall accumulate PATH seniority without limitation" means exactly what it says, the extension from 30 days to 90 days did not remove that language from the Agreement.

The Agreement clearly allows the Carrier the unfettered right to grant Leaves of Absences for any amount of time, however, the only restriction is that employees can

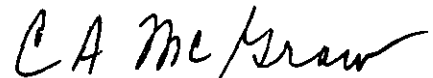
only accumulate seniority for up to 30 days. A clear reading of this provision does not imply that an employee who is granted a leave of absence in excess of 30 days will cease to be considered an employee, only that the accumulation of seniority shall not exceed 30 days.

Based on the decision expressed in Award 34043 - the language; "**However, employees on leave of absence by reason of use in an official capacity by the BRS shall accumulate PATH seniority without limitation**" means absolutely nothing. It is noted that the Referee conveniently failed to cite the entire Leave of Absence Rule which addresses the accumulation of seniority provision. In the Majorities opinion the language in Article XIV (H) is not tied to nor incorporated into Article VI.B.3.a., however, it does negate the exception regarding official BRS leaves of absence.

It does not stretch the imagination to grasp the parties original intent when they first negotiated the Leave of Absence Rule. Common sense would seem to dictate a logical outcome. Unfortunately, the Majority turned a blind eye to simple reasoning and fashioned an Award that is contrary to logic.

Therefore, it can be concluded that the Referee's findings are palpably erroneous and without precedential value.

Respectfully Submitted,



C.A. McGraw
Labor Member