

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 34971
Docket No. MW-33311
00-3-96-3-817

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

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employees
(Soo Line Railroad Company (former Chicago, Milwaukee,
(St. Paul and 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. M. J. McPherson, by letter dated October 6, 1995, because he allegedly voluntarily left the service of CP Rail System and accepted a leave of absence other than specified by Rule 17 of the Schedule Agreement (System File C-25-95-A380-01/8-00247 CMP).
- (2) As a consequence of the violation referred to in Part (1) above, the Claimant shall be reinstated to service with all rights, benefits and seniority unimpaired and he shall be compensated for all wage loss suffered beginning October 6, 1995 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.

Prior to the events that resulted in the forfeiture of his seniority rights, the Claimant established seniority on October 22, 1990 in the Maintenance of Way Department. During September 1995, he was assigned as a Machine Operator on the Fire Gang on the T-2 Project. His assigned workweek was ten hours each day, Monday through Thursday, with Friday, Saturday and Sunday designated as rest days.

There is very little dispute between the parties over the facts giving rise to the instant claim. By verbal request that was confirmed in writing on August 28, 1995, the Claimant waived a formal Investigation regarding his absenteeism on April 25, May 10, 11, June 26, August 2, 3 and 10, 1995 and continued excessive absenteeism. The Claimant accepted an assessment of a ten day deferred suspension with a probationary period of 12 months, beginning August 21, 1995.

During the probationary period, on Tuesday, August 29, 1995, the Claimant was three and one-half hours tardy. On August 30, 1995, the Claimant again requested that formal Investigation be waived with respect to his tardiness on August 19. The Claimant chose to begin his suspension on September 4, 1995. On Monday, September 25, 1995, when the Claimant was to return to work, he called Supervisor Kuntz and left a message on his voice mail requesting him to return his telephone call. Kuntz was in training classes in Minneapolis that entire week and did not check his voice mail until Monday, October 2, 1995.

Upon receiving the Claimant's voice mail message, Kuntz returned his call and informed him of the location where he was to report for work. The Claimant said that his truck had been repossessed. Kuntz informed the Claimant that if he did not report to work, he would be considered on unauthorized leave.

By October 6, 1995, the Claimant failed to return to work. On that date, the Carrier sent the Claimant a letter in which he was advised that due to his failure to protect his assigned position since September 25, 1995, he "voluntarily left the service" of the Carrier "and accepted a leave of absence other than specified by Rule 17 of the

Agreement.” In its October 6, 1995-letter, the Carrier further advised the Claimant that his seniority rights had been forfeited” and he was “no longer an employee” of the Carrier.

The question raised by the facts is whether as the Carrier contends, the Claimant “accepted a leave of absence other than specified by Rule 17 of the Agreement,” or as the Organization argues, the Claimant never requested a leave of absence and was dismissed from the service of the Carrier without a fair and impartial Investigation as required by Rule 18. After carefully examining the record, the Board concludes that the Claimant took an unauthorized leave of absence. In accordance with Rule 17 (e) which is self-executing, the Claimant has forfeited his seniority rights.

The record establishes that the Claimant was aware that he was to return to work on September 25, and left a message on Kuntz’s voice mail to call him. Kuntz was unable to return the Claimant’s call until October 2, 1995 at which time he informed the Claimant as to the location where he was to report to work. The Claimant told Kuntz that his vehicle had been repossessed. Kuntz responded by telling the Claimant that if he did not report to work, he would be considered to be on unauthorized leave of absence. The Carrier then waited until October 6, 1995 for the Claimant to return to work, but he failed to do so.

There is nothing in the record to indicate why the Claimant failed to report to work on September 25, 1995 or within ten working days thereafter, until October 6, 1995. Despite notification by Kuntz on October 2 that if he did not report to work, he would be considered to be on unauthorized leave, the Claimant, nevertheless failed to report to work by October 6, 1995.

The Carrier could not do any more in its efforts in having the Claimant report to work. Not only was the Carrier unsuccessful in its efforts, but the Claimant failed to contact the Carrier to indicate why he would not or could not report to work. In effect, the Claimant abandoned his position.

Among the most fundamental responsibilities of the employment relationship is that an employee be required to provide the employer with advance notice of his or her absence. The Claimant in this case knows why he was not able to report for work as required since September 25, 1995. However, the Claimant never advanced a reason, let alone a justifiable reason, for his failure to report for work.

Moreover, there is no evidence in this case that the Claimant was “disciplined or dismissed” as to require a Hearing as provided in Rule 18. The Claimant failed to report to work on September 25, 1995 and thus was considered to be on a leave of absence other than as specified in Rule 17 (a) (b) and (c). Rule 17 is self-executing. On his own initiative, the Claimant went on leave of absence other than as specified in Rule 17. See, e.g., Third Division Award 32049. Accordingly, the Claimant forfeited “all seniority rights” under Rule 17 (e).

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 20th day of September, 2000.