

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 34973
Docket No. MW-33357
00-3-96-3-849**

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 Employes
(Union Pacific Railroad Company (former Oklahoma-
(Kansas-Texas 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 Machine Operator Helper T. C. Reed on August 29, 1995 for absence without proper authority from August 14 to 29, 1995 (System File MW-96-9-OKT/960051 OKT).**
- (2) As a consequence of the violation referred to in Part (1) above, the August 19, 1995-letter of seniority forfeiture shall be removed from Mr. T. C. Reed’s record and he shall be reinstated to service with all rights and seniority unimpaired.”**

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.

At the time of the events giving rise to the instant dispute, the Claimant was assigned to a Machine Operator Helper position on Gang 9102. The Claimant was absent without authority from his assignment during the period of August 14 through 29, 1995. When the Claimant failed to report to work on August 29, 1995, Manager Time Keeping F. J. Mitchell sent a certified letter to the Claimant's last address of record advising him that he had been continuously absent from his assignment without authority from August 14, 1995.

Mitchell's August 29 letter went on to state that in accordance with the Memorandum of Agreement dated September 18, 1990 the Claimant was "considered as voluntarily forfeiting [his] seniority rights and employment" with the Carrier. In addition, Mitchell advised the Claimant that he had ten calendar days from receipt of the letter to request in writing a Hearing. The Claimant acknowledged receipt of the August 29 letter on September 1, 1995.

Neither the Claimant nor the Organization requested a Hearing within ten calendar days of September 1. As a result, the Claimant's name was removed from the seniority roster.

By reason of the Carrier's actions the Organization sent a letter dated November 1, 1995 to the Carrier in which it presented a claim seeking to have the Claimant's seniority restored with all benefits, because the Carrier had wrongfully taken away his seniority. In pertinent part, in its letter dated November 1, 1995, the Organization stated that the Claimant "admitted having a problem and contacted the Employee Assistance Program Manager on August 22, 1995." Moreover, the Organization stated that the Claimant was admitted to a rehabilitation hospital in Houston, Texas, on September 8, 1995 and continued to be in the hospital in compliance with the Employee Assistance Program.

The Board concludes that the Claimant did not have proper authority to absent himself from his assignment from August 14 to 29, 1995. Despite entering a rehabilitation program the Claimant was required to contact the Carrier to indicate his reason for not coming to work.

By merely contacting the Employee Assistance Program Manager on August 22, 1995 because he "admitted having a problem," does not excuse the Claimant from notifying the Carrier with respect to his failure to be at work. The Claimant's

admission to a rehabilitation hospital on September 8, 1995 is inadequate as a justification for his failure to be at work to protect his assignment from August 14 to 29, 1995, which took place prior to his admission to the hospital.

Consistent with his indifference to the responsibilities he owed the Carrier, the Claimant failed to comply with the letter sent by the Carrier on August 29, 1995 to request, in writing a Hearing with respect to the Carrier's decision that he was considered to have voluntarily forfeited his seniority rights and employment with the Carrier because of his absence from his assignment from August 14, 1995. The reasonable inference to be drawn is that he ignored the Carrier's letter despite the grave consequences set forth in the letter.

Placed in its proper context, notification to the Carrier is an obligation of a minimal nature not requiring expenditure of effort or time when balanced against the grave consequences for failing to notify the Carrier. Moreover, it is hard to believe that the Claimant was unaware of the consequences for failing to notify the Carrier of his failure to be at work for 15 consecutive days between August 14 and 29, 1995. Indeed, in August 1995 the Claimant had been an employee of the Carrier for approximately five years. In June 1993, he received a 60-day leave of absence and was disciplined for being absent without authority from October 16 through 26, 1994 when he was in a treatment program. The discipline received by the Claimant was less than a year before the events giving rise to the instant grievance. Thus, the Claimant should have been aware that his absence without proper authority between August 14 and 29, 1995, despite having contacted the EAP Manager on August 22, 1995 would have a serious and detrimental impact on his employment with the Carrier. In light of the slight and effortless gesture of providing notification to the Carrier of his failure to be at work, and because the Claimant should have known of the serious consequences to him resulting from his failure to notify the Carrier, his failure to notify the Carrier is highly irresponsible and showed a complete disregard towards his obligations to, and his own employment with, the Carrier.

It must be underscored that it was the Claimant's responsibility to notify his supervisor or manager with respect to his failure to report to work and be absent from his assignment between August 14 and August 29, 1995. The Claimant neither sought nor obtained proper authority to be absent from work during the 15 days in August 1995.

The Memorandum of Agreement between the Carrier and the Organization which is dated September 18, 1990, in pertinent part, provides that an employee continuously absent for a period of 15 days or more without proper authority from his position "shall be considered as voluntarily forfeiting their seniority rights and employment relation, unless satisfactory cause is shown as to why proper authority to be absent was not obtained." Clearly, the record demonstrates that the Claimant was continuously absent without proper authority from his position for a period of 15 days between August 14 and 29, 1995. No satisfactory cause was established by the Claimant or the Organization as to why proper authority to be absent was not obtained. The terms of the September 18, 1990 Memorandum of Agreement are self-executing. Accordingly, the Claimant forfeited his seniority rights and employment relationship with the Carrier.

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.