

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 34980
Docket No. MW-33454
00-3-96-3-976

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 terminated employee C. Johnson’s seniority on November 2, 1995 for his alleged absence in October and November, 1995 without the benefit of a fair and impartial hearing as prescribed in Rule 18 as amended (System File C-36-95-A380-03/8-00256 CMP).
- (2) Employee C. Johnson shall now be reinstated ‘ . . . to Carrier service retroactively effective to November 2, 1995 and continuing for all straight time, overtime, vacation and benefits lost to which he is entitled. . . .’”

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 forfeiture of all his seniority rights, the Claimant established seniority on August 22, 1990 in the Maintenance of Way Department. During October 1995, the Claimant was regularly assigned to fill a position and was working on a maintenance crew.

On November 2, 1995, the Carrier sent the Claimant a letter in which it advised him that he failed to protect his assigned position on the Utility Crew since October 24, 1995 by voluntarily leaving the service of the Carrier. In its letter, the Carrier went on to state that therefore, he "accepted a leave of absence other than specified by Rule 17 of the Schedule Agreement..." The Carrier concluded its November 2, 1995-letter by indicating that the Claimant's "seniority rights have been forfeited."

There is very little dispute over the facts giving rise to the instant claim. The Claimant was absent from his assignment on consecutive days during the period of October 25 through November 2, 1995. There is nothing in the record to establish that the Claimant made any attempt or effort to notify a supervisor as to why he was absent and whether he was returning to his position.

An undated handwritten letter from someone named "Greg" was submitted by the Organization. In the letter which is not addressed to a person, "Greg" refers to having talked with the Claimant who told him that he had family and financial problems and was unable to "take care of them" while "working on the road." Due to "the stress at the time," "Greg" states that although [the Claimant] did not "want to lose his job," he had to "deal with these problems so he put his family first."

Assuming that the Claimant had "financial and family problems" which caused him "stress" does not adequately justify walking off the job and not reporting to work between October 25 and November 2, 1995, especially when the Carrier was not informed of the Claimant's reasons for failing to report to work. Moreover, it should be underscored, that, as noted above, the only basis for the Claimant's reasons for failing to report to work was an undated letter from "Greg" which was not addressed to any particular person, but was merely part of the Organization's Submission in this dispute. Moreover, the information set forth in "Greg's" letter is based upon a conversation that "Greg" states he had with the Claimant. Such hearsay evidence is neither reliable nor probative.

There is no question that a loss of seniority is a serious matter. In this case the Claimant abandoned his position and merely took off without any thought of obligation owed to the Carrier. The actions of the Claimant reflect a total disregard of the responsibilities owed to the Carrier. It is not incumbent upon the Carrier to seek out the Claimant to determine his whereabouts, but to fill the position that was left abandoned.

Clearly, there were no reasons offered by the Claimant for his actions. It is the Claimant's responsibility to come forward to justify his failure to report to work. It can be safely stated that there are many employees who suffer family and financial problems that result in stress. The obligation to notify the Carrier is slight and does not require much time and effort. However, to abandon one's position without notification to the Carrier shows a reckless disregard for the obligations owed to the Carrier. The failure to report for work without notification to the Carrier for roughly one week manifests an intent to abandon the job and to take a leave not specified in Rule 17 (a) (b) and (c).

Furthermore, under the Agreement, the Organization had the right to request an Unjust Treatment Hearing. However, in this case it failed to make such a request.

Based on the record in this case, the Claimant was not disciplined or dismissed by the Carrier so as to require a Hearing under Rule 18. The Claimant's seniority rights were forfeited under Rule 17 (e) because failure to report for work without notification to the Carrier is considered to be a leave of absence other than as specified in Rule 17 (a) (b) and (c). Rule 17 is self-executing. Accordingly, the claim is denied.

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.