

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 35724  
Docket No. MW-34795  
01-3-98-3-503

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

(Brotherhood of Maintenance of Way Employees  
**PARTIES TO DISPUTE:** (  
(Consolidated Rail Corporation

**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. D. A. Dubach by letter dated August 30, 1996 for alleged absence in excess of fourteen (14) consecutive days without permission (System Docket MW-4641).
- (2) As a consequence of the violation referred to in Part (1) above, the August 30, 1996 letter shall be removed from Mr. Dubach's record, he shall be reinstated to service and compensated for all lost wages 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 reflects that the Claimant had been furloughed and, after approximately ten months, he bid on an Assistant Foreman position on August 1, 1996 in a different seniority district. The Carrier awarded the Claimant the position effective August 7, 1996. The Claimant failed to report for the Assistant Foreman position. In a letter dated August 30, 1996, the Carrier informed the Claimant that:

**"Since August 07, 1996, you have been absent without permission from your position as Assistant Foreman . . . headquartered at Dewitt, New York.**

**Our records indicate that you have been absent in excess of fourteen (14) days.**

**Therefore pursuant to Rule 28 of the BMW Agreement, your seniority is hereby forfeited in its entirety."**

**Rule 28 (Absent Without Permission) provides that:**

**"(a) An employee unable to report for work for any reason must notify his supervisor as soon as possible.**

**(b) Except for sickness or disability, or under circumstances beyond his control, an employee who is absent in excess of fourteen (14) consecutive days without receiving permission from his supervisor will forfeit all seniority under this Agreement. The Employee and the General Chairman will be furnished with a letter notifying them of such forfeiture of seniority. The employee or his representative may appeal from such action under Rule 27, Section 3."**

**A review of the record indicates that the Carrier did not violate the Agreement. In particular, the Claimant failed to take the necessary steps to determine whether the Carrier had awarded the Claimant the position of Assistant Foreman for which the Claimant had submitted a bid. The Claimant had an affirmative obligation to make suitable and effective arrangements to monitor the awarding of the Assistant Foreman position. The Claimant failed to do so. The record does not contain any extraordinary, remarkable, or unusual circumstances that eliminated, excused, or relieved the Claimant of the responsibility to be available to accept the successful bid or, at minimum, to notify**

the Carrier of any intervening difficulty that may have precluded the Claimant from reporting to work in a timely manner. By failing to do so, the Claimant assumed the risk that the Carrier would apply Rule 28. This case does not involve a traditional return to work from furlough situation and therefore the notification requirement set forth in Rule 4, Section 3 lacks relevance. Under these circumstances, no basis exists to disturb, overturn, or reverse the actions of the Carrier in applying the provisions of Rule 28. See Third Division Awards 25648 and 31788.

**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 24th day of October, 2001.**