

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22159  
Docket Number CL-22192

Abraham Weiss, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and  
( Steamship Clerks, Freight Handlers,  
( Express and Station Employees  
(  
(Illinois Central Gulf Railroad

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood  
GL-8429, that:

"(a) Carrier violated the Agreement when it wrongfully discharged J. W. Hastings from the service of the Carrier for failure to comply with Rule 13, Paragraph (f) of the Schedule of Wages and Rules.

(b) Carrier now be required to reinstate Claimant J. W. Hastings to the service of the Carrier, with pay for all time lost and all rights unimpaired commencing April 7, 1975.

(c) Joint check of payroll records is requested by Employees to ascertain amount due Claimant."

OPINION OF BOARD: Claimant's seniority was terminated on April 4, 1975, for failure to report for duty at the expiration of his sick leave of absence, granted for the period March 1 to April 1, 1975. Carrier's action was based on the provision of Rule 13(f):

"Employees will forfeit their seniority rights and be considered as having resigned from the service if they fail to report for duty at the expiration of leave of absence (or vacation), except when failure to report is the result of an unavoidable delay."

Petitioner, in appealing Carrier's action, denied that Rule 13(f) was applicable, but argued that Claimant, under Rule 14, has five (5) working days following a leave to return to work.

Rule 14 (Return from Leave of Absence) provides in Section (a) (1):

"An employee returning from leave of absence or vacation may return to the position to which he holds bulletin rights (provided it has not been abolished or senior employee has not exercised displacement rights thereon), or he may, upon return, or within five working days thereafter, exercise displacement rights to any position bulletined during his absence (except those positions bulletined as a result of his leave of absence)."

Claimant submitted a doctor's certificate dated April 7, 1975, which states that claimant was under his professional care since February 11, 1975.

Petitioner argues that claimant could not have returned to work at the expiration of his leave of absence on April 1, 1975 because his doctor did not release him for duty until April 7, 1975, since claimant was not able to see the doctor until that date. Rule 13(f), the basis for carrier's action, provides that unavoidable delays will be an exception to the reporting rule, Petitioner adds, and states that the question to be resolved by this Board is whether Rule 13 provides for exceptions to be granted in a case such as before us.

Petitioner also argues that Carrier's action in terminating claimant's seniority constituted discipline, which under Rule 22 of the Agreement, requires an investigation prior to discipline or discharge. Carrier, on the other hand, contests this line of reasoning and maintains that this issue is not one of discipline but rather a case of seniority forfeiture under Rule 13(f).

Carrier argues its case as follows:

1. The Carrier had no word from claimant for three days following the expiration of his leave, which was for a fixed period ending April 1, 1975.

2. There is no evidence in the record, other than a mere assertion, that claimant could not see his doctor until April 7, so as to qualify under the "unavoidable delay" exception of Rule 13(f).
3. The Doctor's certificate of April 7 does not constitute proof or evidence that there was, in fact, unavoidable delay nor that claimant could not have returned to work, as far as his medical condition was concerned, on or before April 1, the expiration date of his leave; or that he was sick and unable to work between April 1 and April 7.
4. Although the doctor's April 7 certificate stated that claimant was under the doctor's professional care since February 11, 1975, claimant was at work several days in February subsequent to February 11. There is no evidence of any consultations by claimant and his doctor during his authorized leave from March 1 to April 1, nor during the period from April 1 to April 7.
5. Rule 14, on which Petitioner relies, does not relieve claimant of the requirement to report for duty by the expiration of his fixed leave of absence.

Arguments were raised by both parties as to the requirements for obtaining a doctor's release prior to returning from medical leave of absence. Petitioner, in appealing the claim on the property, asserts that the Carrier would not have permitted claimant to go on duty "until he had secured a medical discharge certificate." Carrier's response is that while a doctor's release is uniformly required for a return from medical leave only for absence in excess of 30 days (or a calendar month, as in this case), a doctor's release is not automatically required, and in practice is seldom required, for a medical leave of shorter duration. Carrier also raised a procedural question; namely, that reinstatement of claimant with no loss in seniority would adversely affect the seniority of other employees, junior to the claimant. Hence, Carrier insists, these junior employees should be given notice of the instant proceedings and an opportunity to be heard. Suffice it to say that the request for a third party hearing was granted by this Board, that such a hearing was scheduled, and that no third party witnesses appeared.

Both parties also raised questions concerning the admissibility of statements or exhibits not presented during the handling of the dispute on the property and hold that these are not properly before this Board. We shall ignore the contested statements or exhibits in our consideration.

We now turn to the merits of the issue before us. It seems clear to us that Rule 13(f) applies to the facts of this case; that Petitioner did not supply clear and convincing evidence either that claimant was unable to report for work at the end of his authorized leave of absence because of continued physical disability or that he had requested an extension of his leave of absence, or that he was unavoidably detained in reporting. As we read Rule 13(f), only under these conditions could claimant avoid forfeiting his seniority, however, unfortunate the results might be for his employment status. "Unavoidable delay" is the only exception recognized in the Rule; the language is clear and unambiguous. Failure to submit probative evidence that the delay in reporting for duty on the requisite date was unavoidable, causes employees to "forfeit their seniority and be considered as having resigned from the service" under the clear and express terms of the rule. Petitioner supplied no reason for claimant's 7 day delay in reporting on April 1, other than the bare assertion that claimant could not see his doctor until April 7. Such a statement is not evidence and is not supported by fact. Mere assertions do not sustain a claim.

**FINDINGS:** The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: *C. W. Paulos*  
Executive Secretary

Dated at Chicago, Illinois, this 31st day of July 1978.