

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22327
Docket Number CL-22379

Abraham Weiss, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employes
(The Atchison, Topeka and Santa Fe
(Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
GL-8496, that:

(a) Carrier violated the provisions of the current Clerks' Agreement at Chicago, Illinois, on August 16, 1976, when it removed Mr. Tom Asta from the service of the Carrier, and

(b) Mr. Tom Asta shall now be reinstated into the service of the Carrier with all past rights restored on the basis they were prior to his dismissal from the service of the Carrier on August 16, 1976, and

(c) Mr. Tom Asta shall now be compensated eight (8) hours' pay each work day of Control Clerk Position No. 6079, at the rate of \$52.3157 per day since August 16, 1976, and the same for each work day of Position No. 6079 until he is reinstated into the service of the Carrier, and

(d) That all letters pertaining to this investigation and the transcript of the investigation be withdrawn by the Carrier from Tom Asta's personal record.

OPINION OF BOARD: This case comes to us under the following circumstances;

Claimant was on a medical leave of absence. He was released by his personal physician to return to work and did report and worked on June 14, 1976. The next day, June 15, Claimant's supervisor, Agent Wujcik, notified him that he was being placed on a medical leave of absence until he furnished a doctor's statement indicating that Claimant was not taking any medication for his illness. The Agent confirmed this in writing the next day, June 16, adding that "you are herewith advised that it is your responsibility to initiate leave of absence papers within the required time limits covering."

Claimant did not supply a completed leave of absence form within the 30-day period of the leave nor did he apply for an extension of the leave by July 15.

Carrier scheduled an investigation by letter of July 24 (amended by letter of July 26) to determine Claimant's responsibility for being absent from duty without authority. Following the hearing, Claimant was removed from service. Claimant (and his representative) argue that he was forced on medical leave by the Carrier on June 15 without justification. Carrier's Agent and Assistant Agent, however, both testified that Claimant was requested on June 14 to transport waybills to another Carrier, that Claimant refused, stating that he was too busy and that the company car was unsafe. (The car was a new leased auto, insured by Carrier). When urged to perform the assignment, Claimant then, it is alleged, advised the Assistant Agent that he was taking medication for an equilibrium problem and that he could not drive the car, and did not even belong "on the tracks" so long as he was on this medication. On the following day, June 15, the Agent and the Assistant Agent further discussed this matter with the Claimant, who, they assert, repeated that he could not drive the company car and "should not go out on the tracks" because of the medication he was taking. This led the Agent to place Claimant on immediate medical leave of absence from June 14 through July 14, 1976. Claimant signed the leave of absence form which provides specifically that employees are expected to report for duty on or before the expiration of such leave; that failure to so report constitutes sufficient cause for dismissal; and that requests for leave extension must be timely made.

At the hearing, Claimant denied that he was taking medication for an equilibrium problem. He also stated: "I did not feel that a Hertz rent-a-car or the company vehicle, which is a disaster, was safe for me to drive."

On July 23, 1976, Claimant submitted a signed leave of absence form which did not list any dates and on which the phrase "without pay" was deleted.

Carrier justifies its action in dismissing Claimant on essentially two grounds:

1. Claimant, under Rule 21-C of the agreement, automatically terminated his seniority.

2. Claimant, by not arranging to extend his leave which expired at midnight, July 14, 1976, was absent without leave.

Rule 21-C provides:

"An employee who fails to report for duty at the expiration of the leave of absence shall be considered out of service, except that when failure to report on time is the result of unavoidable delay the leave of absence will be extended to include such delay."

Rule 21-C is clear, unambiguous, and essentially automatic in its operation. Under the rule, an employee voluntarily forfeits his seniority rights by failing to return from leave of absence. The record in this case includes no reference to unavoidable delay which might warrant an extension of the leave. The record also shows no evidence that Claimant requested an extension of his leave within the applicable time frame.

Carrier's General Rule 13 provides:

"Employees whose ability to perform their duties in the usual manner becomes impaired because of accident or disease must pass a satisfactory physical examination when so required. Employees who have been off duty because of accident or disease may be required to pass a satisfactory physical examination before returning to duty."

"Employees must not be absent from duty without proper authority, and when authorized absence is in excess of ten (10) calendar days, entire absence must be authorized by formal leave of absence (Form 1516 Standard) except for scheduled vacation period."

Claimant had 30 days within which to furnish a doctor's statement that he was not taking any medication for his illness--which his own physician originally diagnosed as an equilibrium condition. This was a simple requirement, actuated by Claimant's own admissions to both the Agent and the Assistant Agent on the first day he returned to work following his medical leave of absence from May 6 through June 14.

Claimant did not communicate with Carrier for some 38 days after he was placed on leave starting June 14 nor did he furnish Carrier with a doctor's statement as requested. We must admit to some puzzlement as to why Claimant did not comply with Carrier's request. The point is, he did not, and the self-executing provision of Rule 21-C was triggered. We must conclude, therefore, that Claimant absented himself from his assignment beyond the period of his authorized leave and thereby terminated his employment relationship.

The hearing which Carrier accorded Claimant, though not required under Rule 21-C, demonstrated that Claimant was absent without leave. This, in itself, constitutes another basis for Claimant's dismissal from service. Claimant's leave of absence expired at midnight on July 14, 1976. He did not request an extension before that date. He did not report for duty. He was, therefore, absent from duty without proper authority. This Board has in many Awards held that unauthorized absence from duty during assigned hours is a serious offense, which frequently results in dismissals from service, and this Board has upheld such dismissals.

Claimant, as noted earlier, asserted that he was forced to take medical leave commencing June 15, against his wish. However, by signing the standard leave of absence form, which contained the requirement that employees must return to service on or before the expiration of such leave, Claimant was under an obligation to return to service prior to the expiration date of such leave, or request an extension. As discussed above, Claimant did not comply with the terms and conditions of such leave, clearly stated on the form which he signed.

Carrier, on several occasions during the processing of this Claim offered to reinstate Claimant on a leniency basis, without pay, provided Claimant underwent a complete physical, to be reviewed by Carrier's Chief Surgeon. Carrier's leniency offer was rejected.

We must conclude, on the basis of the record before us, that Claimant failed to comply with the terms of his leave and by such failure automatically terminated his employment relationship with the Carrier. Claimant had 30 days prior to the expiration of his leave to resolve the issue, by furnishing a doctor's statement. This he did not do nor does the record indicate that he took any steps during the 30-day period to visit his doctor, obtain a medical statement, or communicate with the Carrier to secure an extension of his leave.

Nor is any unavoidable delay alleged or claimed in the record.

By his inaction, Claimant lost his seniority rights. We will deny the 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 Employee involved in this dispute are respectively Carrier and Employee 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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1979.