

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22837
Docket Number MS-22963

Rodney E. Dennis, Referee

PARTIES TO DISPUTE: (United Steelworkers of America, AFL-CIO
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(The Lake Terminal Railroad Company

STATEMENT OF CLAIM: "This dispute involves the discharge of Mr. A. Diaz without a proper hearing in violation of Rule 7, Section 6, of the agreement."

OPINION OF BOARD: Claimant was a track laborer in carrier's Maintenance of Way Department, with a seniority date of May 10, 1973. On April 9, 1978, claimant requested and was granted a 30-day leave of absence. The letter granting that leave reads as follows:

"Dear Sir:

You have been granted a 30 day leave of absence starting April 10, 1978 and are to return to work on May 9, 1978.

s/L. Pando, Supervisor
Maintenance of Way"

Claimant did not return on May 9, 1978, nor did he report for work on May 10, 1978. He did, however, call in and report himself off at 2:30 p.m. on May 10. When claimant did not appear on May 9, 1978, carrier sent him a letter informing him that he had been dismissed from service. Carrier cites Rule 6, Paragraph (b), Seniority, and Rule 9, Paragraph (b) Leave of Absence, as its authority for its action.

"Rule 6. Seniority

- b. Seniority will be broken only by the following acts and/or conditions.
 - 1. Discharge for justifiable cause.
 - 2. Voluntarily leaving the service of the company.
 - 3. Overstaying leave of absence without the consent of the company."

"Rule 9. Leave of Absence

- b. If renewal of leave of absence is desired, an application for renewal must be made in writing."

Claimant did not request, nor did he receive, an extension of his leave beyond May 9, 1978. He did not appear for work on May 9, 1978. Carrier therefore, dismissed him under Rule 6(b)(3), which states that overstaying a leave of absence without consent of the company will be grounds for loss of seniority.

The organization protests this action and insists that claimant was arbitrarily dismissed without a proper hearing, as required under Rule 7, Section 6, of the controlling agreement. This rule reads in pertinent part as follows:

"Section 6. No employee shall be disciplined without a fair hearing by a proper officer."

As redress for this improper action, the organization requests that claimant be paid 8 hours at his pro rata rate for May 11, 1978.

The Board has carefully reviewed the entire record and finds that none of claimant's substantive procedural rights were violated.

Rule 7, Section 6, is not applicable in this case. This Board has ruled on a number of occasions that termination for failure of an employee to comply with leave of absence rules does not constitute discipline, nor does it entitle an employee to a hearing under the discipline rule. See, for example, Third Division Award 20371; Third Division Award 20426; Second Division Award 6801.

Rule 6, paragraph b, under which carrier acted in this instance, is a self-executing rule that cannot be enlarged upon by this Board. Claimant did not report for work on May 9, 1978, as required by his leave authorization. He did not request an extension of his leave, as required by Rule 9. He was in violation of both rules and carrier was justified in dismissing claimant from service.

The organization argues throughout this record that claimant received a 30-day leave and that that leave should have been concluded on May 10th and not on May 9th. It also contends that claimant called in to report off on May 10th. Consequently, he met the requirement of reporting for work at the conclusion of his leave.

That argument is not persuasive in face of the language of Rule 9 (b). That rule clearly states that an extension of a leave must be requested in writing. Carrier is correct in insisting that an extension of a leave cannot be obtained by relying on the layoff procedure and calling in to report off.

In view of the record of this dispute and the foregoing discussion, we 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 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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 16th day of May 1980.