NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 22931
THIRD DIVISION Docket Number MW-23040

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
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(St. Louis-San Francisco Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier failed to schedule and hold an investigation which was timely and properly requested in conformance with Article 11, Rule 91(b)1 /System File B-1602/.

(2) Manager of System Gangs D. D. Cantrell failed to disallow the claim presented to him (under date of October 9, 1978) as contractually stipulated within Article 11, Rule 90(a)1.

(3) As a consequence of either or both (1) and/or (2) above, Claimant J. P. Williams shall

'be returned to service immediately with payment for all time lost and with all rights intact'."

OPINION OF BOARD: The claimant entered Carrier's service on February 20, 1974. He was employed as foreman on System Surfacing Gang S-1-20. His vacation was scheduled August 14-20, inclusive, 1978. On August 14, 1978, the claimant addressed the following letter to Mr. Tom Adams, Director of Planning and Program Maintenance:

"Requesting leave of absence effective Monday, August 21, 1978. My plans are indefinite, but I don't expect to be gone longer than thirty days."

On August 15, 1978, the General Chairman forwarded a copy of the above letter to the Division Engineer. The Carrier indicates there was a telephone conversation between the Division Engineer and the General Chairman, in which the Division Engineer advised the General Chairman that he should handle the matter with the Manager of System Gangs, but that it was not the Carrier's policy to give a leave of absence for personal reasons. The Carrier also refers to other alleged telephone conversations, but there is nothing in the record to show that a written reply was made to claimant's letter of August 14, 1978.

Claimant attempted to return to service on October 2, 1978, at which time he was told that his service record had been closed and that no leave of absence had been issued in his behalf.

On October 9, 1978, the General Chairman wrote the Manager of System Gangs, requesting that claimant be returned to service with payment for all time lost, and also requested that an investigation be held as provided under Article 11, Rule 91(b)(1) of the Agreement.

On November 10, 1978, the General Chairman wrote to the highest appeal's officer, the Assistant Chief Engineer, advising that he had not received a reply from the Manager of System Gangs or the Division Engineer. The General Chairman again requested that claimant be returned to work immediately with payment for all time lost. On November 29, 1978, the Assistant Chief Engineer replied to the General Chairman, pointing out that the Manager of System Gangs was the correct person to handle leaves of absence for System Gang employes, and stated in part:

> ".....Mr. Cantrell was not contacted until after Mr. Williams attempted to return to service on October 2nd and was advised his record was closed account being absent without leave, after which you then wrote a letter to Mr. Cantrell in connection with this matter.
>
> "Mr. Williams did not make a proper request, did not have a proper reason for a leave of absence, did not need a leave of absence for the time specified and, further, did not have an approved leave of absence which he must have to protect his seniority if he is to be gone over 30 days. Mr. Williams had a responsibility to protect his seniority. As indicated above, by not contacting the proper person to lay off for 30 days, did not have a leave of absence when he decided to be off six weeks rather than 30 days, nor gave a reason for being off work, Mr. Williams forfeited his seniority."

On December 19, 1978, the General Chairman again wrote the Assistant Chief Engineer in part:

> "We do not agree with your declination of the claim, and we are enclosing a copy of a letter we have received from Mr. Williams in which he fully explains the reason for his absence and his efforts to contact the proper officials for a leave of absence. He has also enclosed a copy of a doctor's statement concerning Mr. Williams' absence and the need therefor.

"We wish to also note that our request for an investigation as provided for under Article 11, Rule 91(b)(1), of the effective agreement dated August 1, 1975 has not been granted."

The handling on the property was closed without an investigation being granted.

In its submission to the Board the Carrier contends that claimant removed himself from the service by his failure to secure a written leave of absence properly approved by his superior officer; that claimant was no longer an employe and he had, by his own volition, forfeited all rights with the Carrier.

Sections (1) and (2) of Rule 91(b) of the applicable agreement read:

"(b) An employe who considers that he has been unfairly disciplined or dismissed, or who considers himself unjustly treated, shall be entitled to the following handling of his complaint:

(1) The employe, or the General Chairman acting in behalf of the employe, shall make written request for an investigation to the employe's immediate supervisor. Such request shall be made within 15 days from date of discipline, dismissal or alleged unjust treatment.

(2) If a request for an investigation is made in compliance with requirements of paragraph (1) above, the employe shall be afforded a fair and impartial investigation. The investigation will be held within 15 days of the date of the request made by the employe or the General Chairman, unless a postponement is agreed upon by the Carrier and Organization representative."

It is clear by its language that the provisions of Rule 91(b) are not restricted strictly to discipline cases, as the Carrier appears to contend. The rule also applies to an employe "who considers himself unjustly treated."

While we agree that claimant took an unauthorized leave of absence, at the same time we think that the Carrier was in error in not granting a hearing under Rule 91(b) when requested by the General Chairman. The question remains as to proper remedy.

After long and careful consideration of the entire record, we have concluded that the proper remedy is, and we so award, that claimant be restored to service with his seniority and other rights unimpaired, but without pay for time lost while out of service.

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 Employes involved in this dispute are respectively Carrier and Employes 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 violated to the extent shown in Opinion.

A W A R D

Claim sustained to the extent indicated in Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Paula
Executive Secretary

Dated at Chicago, Illinois, this 30th day of July 1980.