

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24769
Docket Number MW-24192

John B. LaRocco, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Burlington Northern Railroad Company

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

1. The Agreement was violated when the Carrier improperly terminated its employment by Mr. Bradley K. Forbord on January 18, 1980. (System File T-M-297C)
2. The Claimant shall be reinstated with seniority, vacation and all other rights unimpaired and he shall be compensated for all wage loss suffered, including overtime and holiday pay beginning March 10, 1980.

OPINION OF BOARD: On May 6, 1980, the Organization filed this claim alleging that employes with less seniority than Claimant were being recalled to service ahead of Claimant. The Carrier had recalled Claimant from furloughed status on December 31, 1979. When Claimant failed to respond to the recall within ten days, the Carrier terminated his employment on January 18, 1980. The Organization submits that Claimant was temporarily disabled on December 31, 1979, and thus, was excused from reporting back to service.

Claimant was injured in an automobile accident on September 8, 1979, while he was on furloughed status. In late October, 1979, Claimant informed the Carrier that he was injured and would be unable to work until January, 1980. Believing that Claimant was requesting a medical leave of absence, the Carrier, by letter dated November 19, 1980 notified Claimant that a signed physician's statement (describing the nature of Claimant's physical disability) was necessary to obtain sick leave. Receiving no response, the Carrier reiterated its need for a doctor's statement in a December 1979 letter to Claimant. In addition, the Assistant Roadway Supervisor's clerk orally contacted Claimant during this period. Claimant still did not respond. Four days after Claimant's termination, the Carrier received a copy of a medical chart pertaining to Claimant's condition. The chart, which was dated December 10, 1979, related that Claimant's injuries stemming from the automobile mishap would prevent him from working until at least March 1, 1980. When Claimant sought to return to work in early March, 1980, the Carrier denied Claimant's request and argued that he had forfeited his seniority pursuant to Rule 9 of the applicable Agreement.

The pertinent portion of Rule 9 provides that when an employe is called back to service, his "...failure to return to service within ten calendar days, unless prevented by sickness, or unless satisfactory reason is given for not doing so, will result in loss of all seniority rights." There is no doubt that Claimant ignored the December 31, 1979 recall notice. Though he was disabled at the time of the recall, Claimant failed to confirm his injury by forwarding a signed physician's statement and procuring a sick leave of absence. The Carrier's letters in November and December, 1979, expressly warned Claimant that he would be obligated to report to duty when called unless he had obtained a medical leave. Finally, the December 31, 1979 recall notice emphatically informed Claimant that he had to report within ten days or lose his seniority. Since Claimant did not furnish the required documentation, the Carrier did not

know if his injury prevented him from reporting to work. Claimant did not take any affirmative steps to provide the Carrier with the appropriate medical documents until after the Carrier had terminated him. The seniority forfeiture terms of Rule 9 are self-executing. Third Division Awards No. 20863 (Lieberman); No. 21539 (Sickles) and No. 21875 (Zumas). Even though Claimant substantiated his disability after January 18, 1980, his failure to procure a medical leave (despite repeated communications from the Carrier) resulted in the automatic loss of his seniority in accord with Rule 9.

To the extent that this claim is based on recalling workers with less seniority ahead of Claimant, the issue is moot. Claimant was recalled, in seniority order, on December 31, 1979. Inasmuch as we have denied this claim on its merits, we need not address the Carrier's contention that the initial claim was filed beyond the sixty day limitation period set forth in Rule 42.

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:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 13th day of April, 1984

