

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24996
Docket Number MW-25150

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Burlington Northern Railroad Company (former St. Louis-
(San Francisco Railway Company)

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

(1) The Carrier violated the Agreement when it improperly closed the service record of Steel Bridgeman J. West (System File B-2092/MWC 82-7-12).

(2) Steel Bridgeman J. West shall be returned to service with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Prior to the occurrence giving rise to the dispute herein, Claimant was employed by the Carrier as a Steel Bridge Helper, assigned to Steel Bridge Crew No. 902, with seniority dating from November 1, 1975. The record shows that on November 3, 1981, he requested a medical leave of absence, which was approved through and including December 2, 1981. Subsequent thereto he requested that his leave of absence be extended, which request was granted, and the leave of absence was extended until January 31, 1982.

The Carrier contends that prior to the expiration of his leave of absence on January 31, 1982, Claimant did not contact the Engineer of B&B; did not request another extension, nor did he return to service, and nothing further was heard from Claimant until the first week in March, 1982, at which time he was advised that his service record had been closed on February 1, 1982, under Rule 87(c) of the applicable agreement, which reads:

"Employees failing to return on or before the expiration of their leave of absence will lose seniority rights, unless an extension is obtained."

The Organization then requested that an investigation be held in accordance with Rule 91(b)1 of the Agreement. An investigation was scheduled for and conducted on March 23, 1982. A copy of the transcript of the investigation has been made a part of the record.

The purpose of the investigation was, of course, to develop the facts in the case. In the investigation there was substantial evidence adduced, including Claimant's statement, that no request was made for an extension to Claimant's leave of absence prior to the expiration date of January 31, 1982. The Engineer of Bridges and Buildings so testified, and his testimony was corroborated by the Claimant, who testified in part:

"Q. Mr. West, did you contact office of Engineer Bridges and Buildings prior to the conclusion of this approved extension (through January 31, 1982)?

A. No, sir.

Q. Mr. West, when did you call (the) office of Engineer Bridges & Buildings?

A. I called Mr. Epperson on March 2, 1982."

* * *

"Q. Did you understand from Mr. Bryant's letter, however, that effective January 31, 1982, you must either return to your position or request an extension of your leave of absence?

A. Yes sir. I returned to my physician but he would not give me an extension until I had further check-up.

Q. Did you convey this information to office of Engineer B&B?

A. No sir."

* * *

"Q. Mr. West, Rule 87, part 'c' of the Agreement between St. Louis-San Francisco Railway Company and its employees represented by Brotherhood of Maintenance of Way Employees, effective August 1, 1975, reads as follows:

'Employees failing to return on or before the expiration of their leave of absence will lose their seniority rights, unless an extension is obtained.'

Do you understand the provisions of that rule?

A. Yes, Sir.

"Q. Did you comply with provisions of Rule 87 when you failed to either return to your position or contact office of Engineer Bridges & Buildings for an approved extension?

A. No sir."

The Claimant thus admitted that he was familiar with Rule 87(c) of the Agreement, and that he did not comply with its provisions.

The Board finds and holds that Rule 87(c) is self-executing and contains no exceptions. With the Claimant's admission that he did not comply with the rule, we have no alternative but to apply the Agreement as written and deny the claim.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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. Bever - Executive Secretary

Dated at Chicago, Illinois, this 26th day of September 1984.