NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 25669

THIRD DIVISION

Docket Number MW-25796

John W. Gaines, 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. Because of the Carrier's refusal to grant Rudy H. Wilson a leave of absence in conjunction with an injury sustained while in the Carrier's service on July 26, 1982, he shall be reinstated and restored to his position as second class carpenter with seniority and all other rights as such unimpaired and he shall be compensatd for all wage loss suffered. (System File B-2006/MWC 83-5-11B)."

OPINION OF BOARD: Claimant, a 2nd Class Carpenter, fell down on July 26, 1982, in dismounting from the rear of a Carrier truck and sustained an injury later diagnosed as a pulled groin muscle. He finished out that work day on the job, and did not report to work thereafter. Later, Carrier closed his record for having no leave of absence and being unauthorizedly off for the ensuing 30 day period ending August 25, 1982. A subsequent hearing was held as requested in Rule 91 of the contract.

Claimant's whereabouts during the 30 days and later were accounted for by being in and out of several medical facilities, under several physicians' separate care, for a back complication and groin discomfort. He eventually submitted to back surgery, performed sometime early in September, 1982.

The time limit originates in Rule 87 right at the outset:

"(a) Written leave of absence, properly approved by Division Engineer or superior officer, is required in every instance of an employe entitled to be working who is absent for 30 calendar days or more...."

The hearing, finally held on November 24, 1982, after several postponements requested by the Organization, proved fair and impartial in that Claimant was afforded the opportunity to show if how, perhaps, he might have come to feel that Carrier had already become fully cognizant and was acting on his needs, or how he could have honestly misunderstood what was needed, or how he might have been genuinely mislead under the circumstances, or how seriously was he incapacitated from acting at all. Yet, there were no such facts forthcoming.

In the effort, testified to by Claimant, to comply with Article 10, Rule 87 of the Agreement, he had gone so far within the 30 day period as to prepare a request letter to be mailed to Carrier for a leave of absence; nothing was preventing Claimant from so proceeding at that point but the letter, a timely one as intended and as alleged, was otherwise handled. Claimant testified:

> "Well, I thought I mailed it. But I was under medication and everything and I found it later. Where they had set my tray, it had got water on it and everything so I just burned it."

Earlier in his examination he testified:

> "Q. ...Are you familiar with this Agreement, Mr. Wilson (Claimant)?
> "A. Yes, I am.
>
> "Q. Do you understand Article 10, Rule 87 which states, leave of absence must be obtained within 30 days?
> "A. Yes."

Claimant's effort fell short.

The next effort materialized about 43 days after Claimant had been off work, with Carrier's receipt of his unsubstantiated request for leave while under doctor supervision. It was unsubstantiated in the respect that there was no accompanying doctor's statement corroborating the request; no medical leave of absence could be granted without a doctor's statement in support. So that effort, too, fell short because both untimely and improper as not complete for consideration. Claimant consequently allowed his absence to transpire without prior authorization from Carrier, and thus failed to meet his responsibility to request and be granted an authorized leave of absence from work.

Absent a showing that a written leave of absence was approved by its Division Engineer or Superior Officer, we find that Rule 87 supports the action taken by Carrier in this time Claim dispute.

We will deny the claim. Claimant admitted his familiarity with the Agreement, additionally his understanding of the required written leave provision of its Rule 87, and further his own non-compliance with that provision.

The procedural details in this dispute were handled on the property with propriety by the parties and their communications and the responses thereto were timely filed with one another. It stands that the case is properly brought to the consideration of this Board.

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of October 1985.