

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25995  
Docket Number MW-26018

John G. Gaines, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(  
(The Kansas City Southern 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 Laborer B. L. Franks (Carrier's file 013.31-280).

(2) The Claimant 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: Carrier points out Claimant's continuing absence for the two-month period leading up to April 12, 1983, and deplores the state of his service record prior thereto. Carrier submits that in contacts made during the time with him, Claimant had been repeatedly told to report to work.

Carrier proceeded to terminate Claimant's employment effective April 12, 1983, as set out in Carrier's notification dated March 31, 1983, stating:

"You have been off duty since your last day of work February 11, 1983, and this is to advise you if you do not protect your assignment by April 12, 1983 we will close your file as having resigned."

Following notification, Claimant made his first appearance at the job, after hours, on April 12, 1983.

By then, he had no way he could work his position by April 12. Claimant submits he officically reported between 5:30 and 6:00 P. M. but his shifts's workday was over; there was no assignment to protect.

According to the Statement of Claim, the termination violated the Agreement. Timely action was required of Claimant to prevent having his file closed as having resigned. It is not contrary to any Rule called to our attention that, when he defaulted, it amounted to his resignation. We will not sustain 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 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

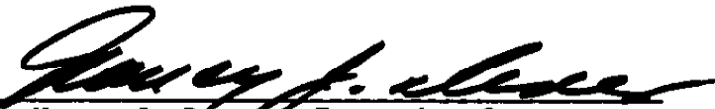
That the Agreement was not violated.

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 26th day of March 1986.

