

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26281
Docket Number MW-26620

James R. Johnson, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Bessemer and Lake Erie Railroad 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 Mr. A. R. Carlucci.

(2) Mr. A. R. Carlucci 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: The Claimant requested a three-month leave of absence, to enable him to care for his 89 year old widowed father who was dying of bladder cancer, and required around-the-clock care. The Carrier granted the leave from January 9 through April 9, 1984. On March 22, Claimant notified the Carrier that his father had died, and that he required a thirty-day extension of his leave, in order to clear up his father's affairs. The Carrier granted an extension of the leave through Sunday, May 6, 1984, inclusive.

Claimant reported for work at the usual time, on Monday, May 7, 1984, but was not permitted to work, and was advised that his employment had been terminated when he failed to return before the expiration of his leave of absence.

The relevant Rule of the Agreement is Rule 26(a), which provides:

"Employees given leave of absence in writing by proper authority of the Company, for six (6) months or less, will retain their seniority. Employees failing to return before the expiration of their leave of absence will lose their seniority rights unless an extension has been obtained." (Emphasis added)

The Carrier contends that the foregoing Rule is clear and unambiguous, and, further, that it is automatic and self-executing. It argues that, unless an employe returns before the expiration of the leave, his seniority is terminated. It argues that the Rule permits neither Carrier judgment, nor exceptions.

The Organization argues that such a position is hypertechnical and unreasonable. It contends that a reasonable person reading the correspondence would conclude that he was to report exactly as and when the Claimant reported, and that, it is inappropriate to deprive Claimant of his seniority for a violation which was highly technical at best.

The record is clear that the leave was granted, and that it did, in fact, expire some seven hours before the Claimant reported for duty. The Rule provides with equal clarity that employees must report before the expiration of the leave, or they will forfeit their seniority. The Rule is automatic and self-executing.

However, the Board finds that the operation of the Rule was inappropriate in this case, because the clarity of the Rule was diminished by the correspondence between the Carrier and the Claimant. Claimant applied for and was granted the leave he requested. In the case of his extension, however, he was granted three days less than he requested, and no explanation was given for the discrepancy. The number of days requested would have expired in the middle of his workweek, and the number granted expired on the day immediately preceding his workweek.

There is nothing in the record to indicate that Claimant disregarded the Rules or his obligations to protect his seniority. To the contrary, he properly requested the leave, requested an extension in a timely fashion, but made an error in judgment with respect to the time he was required to report. That error was rooted in the language of the Leave itself.

Since the Rule is clear, and Claimant had an obligation to know and follow the Rules, he is not entitled to pay for time lost; however, under the facts in this case, the Claimant will be restored to duty with his seniority and other rights unimpaired.

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 violated to the extent shown in the Opinion.

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Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 24th day of April 1987.