

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 27666
Docket No. MW-27576
89-3-87-3-7

The Third Division consisted of the regular members and in addition Referee Mary H. Kearney when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Union Pacific 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 Special Power Tool Machine Operator H. Lamone (System File D-70/013-210-L).

(2) The claimant shall be reinstated with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimant was hired by the Carrier on April 1, 1978, and subsequently worked as an Extra Gang Laborer and a Roadway Power Tool Operator excepting several periods when he was off in force reductions. On March 17, 1986, Claimant was recalled to System Gang 1814.

On June 6, 1986, Claimant was arrested on a DWI charge while off duty and was confined to a detention center in Ogallala, Nebraska. That day, Claimant called the Carrier's Track Supervisor and informed him of his inability to report to work. The Claimant requested five days' vacation for the time he was to be incarcerated. The Track Supervisor denied Claimant's request. When Claimant reported to work on June 13, 1986, the Track Supervisor gave him a letter stating that pursuant to Rule 48(k) he was considered to have voluntarily forfeited his seniority and employment relationship. Rule 48(k) provides:

"Employees absenting themselves from their assignment for five (5) consecutive working days without proper authority shall be considered as voluntarily forfeiting their seniority rights and employment relationship, and unless justifiable reason is shown as to why proper authority was not obtained."

The above Rule, on its face, applies to employees who are absent "without proper authority." This language is not ambiguous. Accordingly, it would be improper for the Board, as the Organization suggests, to modify its meaning by invoking the record of prior negotiations.

Therefore, the question before us is whether Claimant had proper authority to be absent. Claimant notified the Carrier that he could not report to work and that he intended to return to work at the end of his requested vacation. However, his request to use vacation time while he was in the detention center was denied by the Track Supervisor based on his decision that the Claimant could not be spared at that time for an unscheduled vacation. Accordingly, the Claimant's ensuing absence for five consecutive workdays was without proper authority. Numerous Awards by this Board have found Rule 48(k) applicable under similar circumstances. See Third Division Awards 24255, 24606, and 24681.

Moreover, the Board finds that Claimant's incarceration in the detention center does not constitute justifiable reason or good cause for his failure to obtain proper authority. This conclusion has been previously rendered by the Board. See Third Division Awards 24760, 24606, and 22868.

Finally, the Carrier's letter of July 1, 1986, although not precisely drafted, sufficiently meets the requirements of Rule 49. From what is written, Claimant should have been reasonably able to conclude that the Carrier disallowed his Claim because his request for vacation was properly denied (leaving him without the authority to be absent) and further that Claimant's detention was not a justifiable reason for his absence since it was a dilemma for which he, not the Carrier, was responsible.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 17th day of January 1989.