

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(Soo Line Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10255) that:

1. Carrier's action in the termination of Ms. P. A. Jeuk, Extra Clerk, Bensenville, IL, effective March 8, 1984, was excessive, discriminatory, arbitrary and capricious.
2. Ms. P. A. Jeuk shall have her record cleared of all charges which may have been placed against her as a result of this case.
3. Ms. P. A. Jeuk shall be reinstated to the service of the Carrier with seniority and all other rights unimpaired.
4. Ms. P. A. Jeuk shall be compensated for all wages and other losses sustained account her termination."

FINDINGS:

The Second 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.

In the facts and circumstances of the instant case, Claimant had advised the Management-Placement Services of her furloughed status by letter dated February 22, 1984. By letter dated the next day, said Manager informed Claimant that she was recalled to service in accordance with Rule 12(d). That letter also clearly advised Claimant of the conditions set forth in Rule 12(d) with respect to termination of seniority.

The record indicates that Claimant did not respond to the recall letter from the Manager-Placement Services. By letter of March 8, 1984, Claimant was informed that her seniority was terminated.

It is the position of the Organization that Claimant complied with Rule 12(d) and that the Carrier violated said Rule when it terminated Claimant's seniority "after she gave a satisfactory reason for failing to return to service...." The record confirms that Claimant provided a reason for her failure to return in a letter dated March 11, 1984.

It is the position of the Carrier that the Rule clearly requires the Claimant to return to service within seven days. This the Claimant failed to do. Claimant's failure to return to service was a self-executing act which terminated Claimant's seniority.

Considering this case on merits we find that Rule 12(d) is explicit in the responsibility of Claimant to return to service within seven (7) days after written notification. There is no denial in the record that Claimant received proper notification and failed to respond. The crux of this case has to do with the specific language thereafter wherein Rule 12(d) further states:

"furloughed employees failing to return to service...within seven (7) days after being notified...will be required to give satisfactory reason for not doing so, otherwise they will terminate their seniority."

The Board finds no time limit in this Rule and Claimant responded in a reasonable number of days. The Rule does not require Claimant to give the satisfactory reason within the seven days. While there is much in the record on what Claimant did or didn't say about the Chauffeur's position, her reason for failure to return to service was submitted immediately after her notification that seniority was terminated. Substantiation for her medical condition was submitted in the form of a physician's letter of March 22, 1984.

This Board finds much speculation, argumentation and historical documentation in this record. It finds that Claimant failed to respond within the seven days. It also finds that Claimant did comply with the language of the Rule which requires the submission of a satisfactory reason for failing to return to service. If Carrier wished to deny the reason, or maintain it was unsatisfactory, their burden was not met in this record. They did not refute the medical condition, nor that it would have prohibited Claimant from satisfying the responsibilities of the Chauffeur's position.

We find that Claimant did comply with the Agreement Rule as written. Claimant gave a satisfactory reason for her failure to return to service as a Chauffeur. However, the record submitted indicates that Claimant acted in an unreasonable and inappropriate manner throughout this instant case. The record stands unrefuted that Claimant avoided contact with Carrier officials,

did not discuss the recall when requested, and was opposed to the position due to the scheduled hours. There is no denial that Claimant had been requested to wait for a discussion with the Manager-Placement Service and had left without complying with the request. Claimant's own inaction (including failure to request an unjust hearing), avoidance and failure to answer the recall letter were inexcusable. Nevertheless, we are constrained by the Rule and the unrefuted physician's letter (which states that Claimant could not work the position) to find the Carrier's termination of seniority in these instant circumstances to be excessive action to Claimant's failure to respond. We will sustain Parts 1, 2 and 3 of the Claim. We will deny Part 4 for the reasons given herein.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 25th day of May 1990.