

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 28764
Docket No. MW-28801
91-3-89-3-190

The Third Division consisted of the regular members and in addition Referee Irwin M. Lieberman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
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(Union Pacific Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it terminated the seniority of Track Sub-department Employee J. E. Weaver on November 12, 1987 for alleged failure to comply with Rule 25(g) (Carrier's File 871205).

(2) As a consequence of the violation referred to in Part (1) hereof, the Claimant's seniority shall be restored unimpaired."

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 in this matter suffered a work related injury on June 29, 1985. Subsequently, on July 5, 1985, the seriousness of the injury manifested itself and he received extensive medical treatment and was granted a medical leave of absence in accordance with the provisions of Rule 25. That rule provides under Section (g):

"(g) MEDICAL LEAVE. Requests for leave of absence account sickness or injury which are of fifteen (15) calendar days or less duration need not be in writing, but such requests must be advanced by the employee to the Carrier in a timely manner, specifying the nature of the illness or injury and the number of days required.

Requests for medical leave of absence account sickness or injury in excess of fifteen (15) calendar days must be made in writing and properly documented and supported by a statement from the employee's physician, which includes the specific reason therefor and the expected duration. Extensions thereof must also be supported by a similar statement from the employee's physician.

In the event a dispute arises as to whether a request for a medical leave of absence is properly documented, such dispute shall be resolved by the Carrier's Medical Director and the employee's physician, however, the seniority of the employee involved shall not be terminated as a result of such issue during the pendency of such dispute. If a leave request is denied, the employee will be so advised and required to return to service within five (5) calendar days after receipt of such notice or forfeit all seniority rights.

Employees granted medical leave of absence in excess of fifteen (15) calendar days who are released for duty to return to service before expiration thereof must give forty-eight (48) hours' advance notice before returning."

The original leave of absence expired in June 1987. On June 25, 1987, Claimant requested a thirty day further medical leave of absence. He was informed by Carrier by letter dated July 6, 1987, that:

"I have enclosed Form 153, request for Leave of Absence, which you should complete and return. Request for leave is to be accompanied by current letter from your physician indicating current prognosis and estimated length of continued leave. This information is required in order to progress additional leave of absence."

Claimant filed the request for the leave of absence but did not supply the required medical information. On August 19, 1987, Carrier wrote to Claimant pointing out that the medical information had not been supplied although promised. The letter indicated that the information was required in order to grant the leave and protect Claimant's seniority. Not having received the information, Carrier again wrote to Claimant on September 29, 1987, giving him one more opportunity to supply the required information. On November 12, 1987, Claimant was notified that his seniority was forfeited under Rule 25 (g).

The Organization argues that Carrier was fully aware of the reasons that Claimant had been on a leave of absence for such a long period. Further, it is urged that Rule 25 (g) specifically prohibits the termination of seniority in situations such as this. Carrier, on the other hand, points to the clear and unambiguous language of Rule 25 (g) which provides that medical information must be supplied in support of requests for extensions of medical leaves of absence.


The issue in this matter has been before this Board on many prior occasions. We have held consistently that under the circumstances presented in this dispute seniority was forfeited automatically. See, for example, Third Division Award 19806. Here there can be no question that Claimant failed to comply with the simple terms of the Rule though given considerable time and latitude. The Claim must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dyer - Executive Secretary

Dated at Chicago, Illinois, this 30th day of April 1991.