

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 29699
Docket No. SG-29738
93-3-91-3-107

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(The Atchison, Topeka and Santa Fe Railway
(Company

STATEMENT OF CLAIM:

"Claim on behalf the General Committee of the Brotherhood of Railroad Signalmen on the Atchison, Topeka and Santa Fe Railway Company (ATSF):

CLAIM NO. 1 Local Chairman claim letter dated February 20, 1990. Mr. Shalin's denial letter dated February 13, 1990.

(a). The Carrier violated the Signalmen's Agreement, particularly Rule 38, when it arbitrarily advertised Mr. D.G. Utegg's Signal Maintainer's position as permanent on January 10, 1990.

(b). The Carrier should now be required to revise Bulletin No. 4s' position as temporary. Mr. Utegg is off duty on a medical leave of absence and his job should be posted as temporary until such time as he returns to service as stated in aboved (sic) referred to claim letter.

CLAIM NO. 2 Local Chairman claim letter dated February 21, 1990. Mr. Shalin's denial dated March 6, 1990.

(a). The Carrier violated the Signalmen's Agreement, particularly Rules 29 (a) and 32, when it removed Mr. Utegg's name from the 1990 edition of the California Division seniority roster, thus terminating his seniority.

(b). The Carrier should now be required to reinstate the seniority datum of Mr. Utegg on the California Division 1990 seniority roster."

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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 August 1989, Claimant requested and was granted a medical leave of absence for the purpose of corrective surgery (scheduled for August 28, 1989) for bilateral carpal tunnel syndrome, by Dr. Philip Reed Kiplinger of Apple Valley, California. It was noted on the leave request (Form 1516, Std.) that the leave would expire on December 5, 1989. When Claimant did not report for work by that date, his Supervisor attempted to contact him without success. The Supervisor did, though, contact Dr. Kiplinger's office and was advised that Claimant had not been keeping his appointments and insofar as they were aware, he was capable of returning to work. Claimant's name was then removed from the seniority roster on the basis that he had failed to return to duty following expiration of his leave of absence.

After this was accomplished, on January 10, 1990, a different doctor wrote a note to Carrier stating:

"Mr. Utegg remains under by professional care due to his back injury of May 27, 1989. His disability has been extended until approximately February 5, 1990."

This was the first indication that Claimant was experiencing back problems. Additionally, it was not the basis for granting a leave initially. Nonetheless, the Organization instituted this Claim seeking to have Claimant's name restored to the seniority roster and returned to a medical leave of absence status.

The Board does not consider the Organization's Claim to have merit. Claimant was initially granted a leave of absence for carpal tunnel syndrome surgery. He never requested or received a leave of absence for an unspecified back injury and/or disability. When he was recovered from his surgery it was incumbent upon him to attempt to return to service and if he was unable to do so because

of a different affliction or disability it was then his responsibility to make proper request for continuation of his leave for that purpose. Claimant did neither. Additionally, there is no showing that his claimed, but unsupported back disability, was of the nature, unconscious, comatose, etc., that he was unable to do so. Accordingly, he must be considered to have abandoned his job when he failed to return to duty following recovery from the carpal tunnel syndrome surgery. In these circumstances, Carrier did not violate the Agreement when it removed Claimants name from the seniority roster.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Bever, Secretary To The Board

Dated at Chicago, Illinois, this 16th day of July 1993.