NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Form 1

Award No. 30741
Docket No. MW-31344
95-3-92-3-620

The Third Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way
(Employes
(
(Guilford Transportation Industries -
(Rail Division

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier improperly removed Mr. G. Lawson's name from the applicable seniority roster and refused to allow him to exercise his seniority to a carpenter position at Waterville, Maine on November 19, 1991 (Carrier's File MW-92-2-STR).

(2) As a consequence of the aforesaid violation, the Claimant's name shall be returned to the applicable seniority roster with all seniority rights unimpaired, he shall be compensated for all wage loss suffered and receive credit for all benefits he would have been entitled to as a result of his name being improperly removed from the applicable 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 employee or employees involved in this dispute are respectively carrier and employee 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.

On November 19, 1991, the Claimant advised Carrier that, effective November 15, 1991, his official leave of absence (per Rule 16) terminated, although it might become necessary, from time to time, for reactivation. In any event, Carrier was advised of Claimant's intention to exercise seniority as a carpenter to a position then held by another employee who was headquartered at Waterville, Maine.

On December 6, 1991, the Carrier acknowledged receipt of the Claimant's letter and advised that Carrier's files showed that the Claimant had never requested, nor was granted, a leave of absence per Rule 16. Rather, Carrier records showed that the Claimant was furloughed effective March 3, 1986 and the last roster which contained his name was the January 1, 1987 roster. Since that time, two rosters were published, in accordance with a November 15, 1990 implementing agreement and the Claimant's name did not appear on the August 15, 1990 roster, or the January 15, 1991 roster. No protests were ever received by the Carrier. Thus, because no protest was received within 90 days, under Rule 13(b), the roster is not thereafter subject to protest.

The question was then submitted to the Vice President of Human Resources and it referred to a December 3, 1991 meeting which apparently dealt with the Carrier's assertion that there was nothing in writing to show that the Claimant was ever granted a leave of absence. The January 13, 1992 letter enclosed a handwritten December 20, 1991 statement from a former Engineer of Structures as follows:

> I as Engineer of Structures of the Maine Central Railroad granted [Claimant] Local Chairman of the Brotherhood of Maintenance of Way Employees a leave of absence from January or February 1986 up to the work stoppage in March of 1986. He was also granted other leaves of absence at other times for union business under the conditions of the labor contract.

On January 31, 1992, the Vice President-Human Resources responded to the Organization and advised that on prior occasions, when the Claimant had asserted that he was on a bona fide leave of absence, the Carrier always responded that it had no record of such a leave of absence ever having been granted, and there are no contemporary records to establish that such leave of absence was ever requested or granted. With reference to the December 20, 1991 statement from the former Engineer of Structures, it, according to the Carrier, "...even if it said what you wish it to say, it is far too late. What Mr. Potter's letter does indicate is a leave of absence with a specific end in 1986. Your representation of this letter as granting an open-ended leave of absence conflicts with what the letter says. The letter refers only to a leave of absence up to the work stoppage, a date we all know was March 3, 1986."

The Carrier reiterated the fact that no record of a leave of absence exists and payroll records show that the Claimant's last date of work was February 26, 1986. Moreover, the Carrier asserts that in the fall of 1991, during representation proceedings, the National Mediation Board determined that the Claimant was not eligible to vote.

The on-property handling indicates that the Claimant was advised on many occasions that if he had ever been granted a leave of absence, it was incumbent upon him to provide a copy of that document to appropriate Carrier officials.

The Carrier has asserted that a number of exhibits submitted to this Board were never made part of the on-property handling. As a result, the Board has assured that it has relied solely upon matters properly considered prior to submission here.

The Organization cites Rule 16:

> Employees elected or appointed to official positions of the Organization will be granted leave of absence for the tenure of their office.

In essence, the Organization argues that seniority is a valuable property right and, regardless of the fact that no one is able to produce any documents which shows that the Claimant ever requested or obtained a leave of absence (other than the handwritten February 20, 1991 document), the Organization argues that the Carrier knew that the Claimant was on a leave of absence whenever he was not actively employed by the Carrier prior to November 15, 1991.

The Carrier does not view the dispute in as simplistic a manner as does the Organization. In its most simplified terms, the Carrier asserts that there is absolutely no record in the Carrier's possession, nor has any such document been presented by the Organization, that a leave of absence was ever requested or granted, whereas the record shows that the Claimant was furloughed in 1986. Further, rosters were issued in 1990 and 1991 which did not list the Claimant on the seniority list, and no protests were ever submitted. In point of fact, the Carrier argues that the handwritten letter from the former Engineer of Structures concerning a leave of absence for two or three months in 1986 actually further confirms its position.

To bolster its position, the Carrier points out that a representation election involving Maintenance of Way employees was conducted by the National Mediation Board in late 1991, and it determined that the Claimant was not eligible to vote in the election.

Obviously, the Board recognizes that seniority is a valuable property right of an employee since it carries with it various benefits, not the least of which being certain degrees of job security. One would assume, therefore, that an employee, especially one who may very well have been in a position of union leadership, would have been careful to protect that property right, yet, there is no evidence to indicate that the Claimant ever actually sought an official leave of absence from the Carrier after his last date of employment, i.e., February 26, 1986.

One could argue that the Carrier's records are deficient in failing to show such a request or an actual granting of the leave, but that still leaves open the question of why the Claimant himself, or the Organization, would not have retained copies of the request and the granting of the leave.

The Organization argues that a "leave of absence" is "automatic", and must be granted when an employee is appointed or elected to a union position. Certainly, that argument would have a significant appeal if the evidence demonstrated that there was a request made, but no documentation was shown to prove that the leave was actually granted. But, regardless of that, there still remains the additional obstacle for the Claimant to overcome, i.e., the failure by anyone to protest the fact that the Claimant's name was not contained on the seniority rosters published in 1990 and in 1991.

Finally, I have noted that there is no real rebuttal presented to the Carrier's assertion that it has consistently denied that the Claimant was on a leave of absence.

There is little question that during certain periods of time, the Claimant held certain positions with the Organization but, for the reasons noted above, that, in and of itself, does not resolve this case.

Moreover, although it is not dispositive to this claim, it is interesting to note that the National Mediation Board did consider the question of this Claimant's status during the mentioned representation dispute. There, the Board held:

> ...the Board still required verification of a leave of absence. Given the conflicting affidavits in this case, the Board cannot rely on any evidence that [Claimant] was on an authorized leave of absence except the letter granting the leave or a letter reauthorizing that leave. Since that evidence has not been submitted, [Claimant] is not eligible to vote. His vote, if cast, will not be counted.

A W A R D

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimants not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 31st day of January 1995.