

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31788
Docket No. MS-32574
96-3-95-3-498**

The Third Division consisted of the regular members and in addition Referee Charles J. Chamberlain when award was rendered.

(G. F. Griebel

PARTIES TO DISPUTE: (

(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"This is to serve notice, as required by the Uniform Rules of Procedure of the National Railroad Adjustment Board effective May 16, 1994, of my intention to file an Ex Parte Submission within 75 days covering an unadjusted dispute between me and Conrail involving the following:

'Certified No. P 325 244 809

July 20, 1994

**G.F. Griebel 759550
R D 2 Box 271
Clarion, Pa. 16214**

Dear Mr. Griebel:

In as much as you have been absent in excess of fourteen consecutive days without receiving permission from your supervisor, you have forfeited all seniority in accordance with Rule 28, Section B of the Agreement between Conrail and Brotherhood of Maintenance of Way Employees.

Conrail's records are being marked accordingly.'"

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 were given due notice of hearing thereon.

The Claimant last worked for the Carrier on a Machine Operator Class II position operating a Super "B" Spiker while assigned to DATS TIE GANG 112. His last day of service with the Carrier was June 23, 1994. The Claimant had bid and was awarded a Machine Operator Class II (Backhoe) position on Surface and Maintenance Gang 201. The award was effective June 20, 1994, however, the Claimant failed to report to the position.

On July 20, 1994, the Carrier sent the Claimant a written notice advising him that he had forfeited his seniority under Rule 28(b).

The Organization appealed the loss of Claimant's seniority and in conference on August 22, presented a letter dated September 1, 1994, from Dr. G. S. Horn, M.A. stating that the Claimant was under his care for a period of time commencing July 26, through August 9, 1994.

The Carrier contended that the letter indicating the Claimant was under Dr. Horn's care covered a period subsequent to the period of the unauthorized absence and as such did not negate the forfeiture of seniority under Rule 28.

Based on the record and the evidence in the file there is nothing to show that the extenuating circumstances provision in Rule 28(b) prevented the Claimant from notifying the Carrier concerning his unauthorized absence on the 14 consecutive days involved in this dispute. The Claimant was absent without permission in excess of 14 days.

We can find no persuasive evidence for setting aside the forfeiture of seniority.

AWARD

Claim denied.

ORDER

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

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 26th day of December 1996.