

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32592
Docket No. MW-32631
98-3-95-3-558**

The Third Division consisted of the regular members and in addition Referee Richard R. Kasher when award was rendered.

PARTIES TO DISPUTE: (
(Brotherhood of Maintenance of Way Employes
(Union Pacific Railroad Company (former Chicago
(& Northwestern Transportation Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier terminated the seniority of Mr. M. L. Frauen, effective June 3, 1994, for securing outside employment while being on leave of absence from the Chicago & North Western Transportation Company as a result of his being medically disqualified by the Carrier's Medical Department (System File 4LF-2584T/81-94-126).**
- (2) As a consequence of the violation referred to in Part (1) above, the ‘. . . Claimant's Leave of Absence application must be approved and his Trackman seniority date must be restored. Claimant must be additionally compensated for any time lost following successful treatment of his disability until such time his seniority date is restored.’”**

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.

Rule 54(c) of the parties' agreement provides that employees who "enter business or engage in other employment while on leave of absence will forfeit their seniority" unless special arrangements are made between Carrier and Organization representatives.

The record evidence establishes that the Claimant was dismissed from the Carrier's service on September 16, 1991. While his appeal of this dismissal was pending before Special Board of Adjustment No. 924, the Claimant obtained employment with a company known as the "Nebraska Central Railroad." Special Board of Adjustment No. 924 reinstated the Claimant as a Trackman by decision dated January 27, 1994. The Claimant had requested a leave of absence shortly after his being reinstated due to a medical condition. The leave of absence was approved by the Carrier, and shortly thereafter the Carrier determined that he was employed by the Nebraska Central Railroad. As a result the Carrier terminated the Claimant's seniority.

The Organization claims that the Claimant was not in technical violation of Rule 54(c), as the Claimant did not "enter business or engage in other employment while on leave of absence;" as he had been employed by the Nebraska Central prior to his requesting a leave of absence.

The Organization is essentially correct, and thus there is sufficient reason to sustain the claim. However, as it has not been established that the Claimant at any time subsequent to his May 4, 1994 requested medical leave of absence, which medical leave was granted on May 16, 1994, was ever medically qualified to return to his

position as a Trackman, it is this Board's conclusion that he is entitled to be reinstated with seniority unimpaired, but without backpay, if he is able to medically qualify for the position.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

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

Dated at Chicago, Illinois, this 22nd day of May 1998.