

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36179
Docket No. SG-36073
02-3-00-3-256

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Union Pacific Railroad Company)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad Company:

Claim on behalf of M. J. DeAnda for reinstatement to service with compensation for all lost time and benefits including but not limited to restoration of his seniority, beginning on December 29, 1998 and continuing for the term of the violation. Account Carrier violated the current Signalmen’s Agreement, particularly Rules 30 and 40 when it improperly terminated the Claimant’s Leave of Absence and stripped him of his seniority when it removed the Claimant from service without benefit of a hearing or investigation. Carrier File No. 1180554. General Chairman’s File No. 82408753. BRS File No. 11337-UP.”

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 issue raised and disputed on the property is the application of Rule 30 and Rule 40 to the facts at bar. This is the only issue in dispute and the proper subject raised by the claim. The Organization alleges that the Carrier violated these two Rules when the Carrier notified the Claimant that because he had failed to properly return to service following the expiration of his leave of absence, his seniority rights were forfeited.

The Organization made a number of arguments in its Submission that were not joined on property and were therefore not considered by the Board. On the property, the Organization argued over the language and interpretation of Rule 30 which it argued the Carrier violated. That Rule specifically states in part:

“... Any employee who fails to report for duty at the expiration of leave of absence shall be considered out of service and such position will be declared vacant and bulletined unless an extension has been granted.”

The Organization argues throughout this dispute that the Rule, supra, does not allow for the Carrier to forfeit the Claimant's seniority rights and terminate him from service. It only allows the Carrier to consider the employee “out of service” and re-bulletin their position when they return late from a leave of absence. Nothing in Rule 30 permits the termination of seniority and the dismissal of the Claimant. If this was the Carrier's intent, Rule 40 requires that the Claimant be dismissed only after a Hearing and this was not granted. It points to other Rules in the Agreement that include language not in Rule 30, which the Organization argues supports its interpretation.

The Board notes that although the Organization refers to a doctor's letter and even compensation from the date when the doctor's release to graduated duty was stipulated, nothing further is raised about the letter, its meaning, content, effect or discussion while the dispute was on the property. It is therefore not at issue before the parties at bar or properly considered by the Board.

The Carrier argues that “the Organization's argument centers around the interpretation of the intent of Rule 30.” To that Rule, the Carrier maintains the language is clear. When an employee is late returning from a leave of absence, the Rule is “self-executing” with the employee “considered out of service” and with “no mechanism to return to service.” It maintains that it did not violate Rule 30.

The Board reviewed the claim of the Organization as argued on the property. We find that the Carrier has not violated Rule 30. There is no evidence on the property as to why the Claimant failed to timely request an extension of leave, nor a denial that the Claimant was late in his return from his Leave of Absence. We find no argument in the record to suggest that his leave of absence did not expire or was extended. We find no evidence that the Claimant either returned to work, or was unable to do so. There is no support in the language of the Rule or other Rules indicated by the Organization that Rule 30 is not self-executing or that "out of service" permits the Claimant rights under Rule 40 (see Second Division Award No. 13154). We can find no Carrier violation of the Agreement in the facts at bar.

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 20th day of August 2002.

