

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43162  
Docket No. SG-43654  
18-3-NRAB-00003-160405**

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

**(Brotherhood of Railroad Signalmen  
PARTIES TO DISPUTE: (  
(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:**

**Claim on behalf of B.S. Wakefield, for reinstatement to his former position with all seniority and benefits unimpaired, compensation for all time lost, including overtime, and any mention of this matter removed from his personal record, account Carrier violated the current Signalmen’s Agreement, particularly Rules 55 and 65, when it arbitrarily removed the Claimant from service and extinguished his seniority on February 21, 2015, without providing him a fair and impartial Investigation. Carrier’s File No. 1623908. General Chairman’s File No. UPGCW-Rule-55-65-0214. BRS File Case No. 15358-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 Organization filed the instant claim on the Claimant's behalf, alleging that the Carrier violated the parties' Agreement when it arbitrarily removed the Claimant from service on February 21, 2015, and improperly found that the Claimant voluntarily had forfeited his seniority when he allegedly did not report for duty for five consecutive workdays without proper authority. The Carrier denied the claim.

The Organization contends that the instant claim should be sustained in its entirety because the Claimant was not absent without permission for five consecutive workdays and therefore did not trigger Rule 49(D); because the Claimant was unable to work an added overtime day on February 11, 2015; because the Claimant made supervision aware of his absence on February 17-20, 2015, due to family issues; because Rule 49(D) does not apply in this case; and because there is no support for the Carrier's position. The Carrier contends that the instant claim should be denied in its entirety because the Claimant did not have the right to absent himself, because the Organization's request for a hearing was untimely, and because the Organization has failed to prove that an Agreement violation occurred.

The parties being unable to resolve their dispute, this matter came before the Board.

The Board has reviewed the record in this case, and we find that the Organization has failed to prove with sufficient evidence that the Carrier violated the parties' collective bargaining agreement when it removed the Claimant from employment pursuant to Rule 49(D). Therefore, this claim must be denied.

Rule 49(D) states the following:

"Employees absenting themselves from their assignments for five (5) consecutive working days without proper authority will be considered as voluntarily forfeiting their seniority rights and employment relationship. Such employees may make request for a hearing relative to their forfeiture of seniority to show justifiable reason as to why proper authority was not obtained. Said request for hearing must be

made within ten (10) calendar days from the date of removal from service.”

The record in this case makes it clear that the Claimant was absent from work on February 11, 17, 18, 19, and 20, 2015. He was afforded the opportunity to present a reason as to why he had not been at work on February 21, 2015, but the Claimant did not provide any justifiable documentation.

The Carrier then notified the Claimant that he was being removed from service pursuant to Rule 49(D). The Claimant had ten days, pursuant to Rule 49(D), to file a request for a hearing. He did not do so within the ten-day period.

The language of Rule 49(D) makes it clear that an employee forfeits his seniority and the employment relationship if the employee is absent for five consecutive working days without proper authority. The Claimant did not have proper authority to be off work. Consequently, the Board cannot find that the Carrier violated the rights of the Claimant. The Organization has not met its burden of proof that the Carrier did something that violated the contract. Since the Organization has failed to meet its burden of proof, the Board has no choice other than to deny the claim.

**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 30th day of May 2018.