

PUBLIC LAW BOARD NO. 1760

Award No. 147

Case No. 147

File No. MW-DECR-91-57

Parties Brotherhood of Maintenance of Way Employees
to and
Dispute Norfolk and Western Railway Company
(former Wabash)

Statement
of Claim: M. J. Stewart - Forfeited seniority-failure to respond.

Findings: The Board has jurisdiction by reason of the parties
Agreement establishing this Board therefor.

On April 1, 1991, Track Supervisor Davis was notified by the Claimant, who had been off work since February 8, 1991, that his doctor had released him to work. The Claimant, provided said supervisor with a note from a Dr. Gunauardhana on April 3, 1991 stating that Claimant was capable of returning to work. He was given a return-to-work physical examination on the same date by the Carrier physician. The Track Supervisor told the Claimant to check back with him every day to learn the results of the physical examination since the Claimant had no telephone where the Track Supervisor could contact him. The Claimant passed the physical examination but the Track Supervisor was not able to contact him to so advise.

On May 23 the Supervisor-MW Personnel advised Claimant in writing that he had been qualified for work and advised him to contact her office concerning his return to work. He signed for this letter on May 25, 1991. On May 31, he telephoned said Supervisor-MW Personnel's office advising that he was still under a doctor's care. He was advised that he needed to furnish proof of such continuing disability. Nothing was heard. The Supervisor-MW personnel on June 10, 1991 wrote the third letter to Claimant advising that he needed to report for work or furnish proof of disability within ten days of receipt of the letter. He signed for this letter on June 17th but still nothing was heard from the Claimant.

The Supervisor-MW personnel, on July 1, 1991, notified Claimant in writing that he forfeited all seniority rights and was deemed to have quit the service of the Carrier. This letter was signed for by Claimant on July 8, 1991.

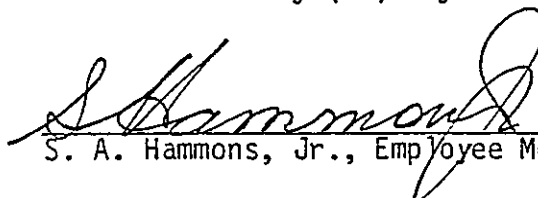
The BMW filed a claim on August 20, 1991 asserting mishandling. The Union cited Rules 2, 3, 4, 23, and 24 in support of their argument. The Carrier relied on Rule 16.

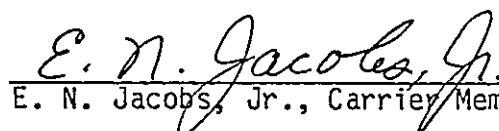
Rule 16 is a self executing rule and when exercised by the Carrier the burden of proof shifts to the employee to prove that an extended absence was necessitated. A questionable employee leave must be supported by proof that such extension was caused by a factor beyond the control of the employee involved. A simple doctor's note asserting that the employee "was under my care" generally does not meet a quantitative level of proof. Here, the understanding reason for the absence was offered but the proof to support the reason was not forthcoming.


Notwithstanding, the Board will reinstate Claimant on a conditional basis. He will be permitted to return to service with all rights unimpaired but without pay for time lost on a last chance opportunity basis providing he can pass the necessary return to service medical examinations.

Award: This claim is disposed of as per findings.

Order: Carrier is directed to make this Award effective within thirty (30) days of date of issuance shown below.


S. A. Hammons, Jr., Employee Member


E. N. Jacobs, Jr., Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued December 30, 1993.