

PUBLIC LAW BOARD NO. 2960

AWARD NO. 111
CASE NO. 148

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Chicago & North Western Transportation Company

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it improperly closed the service record of W. J. Marusiak and shall now be required to reinstate Mr. Marusiak with all rights unimpaired and compensate him for all wage loss suffered. (Organization File 9T-4416; Carrier File 81-84-178).

OPINION OF THE BOARD

This Board, upon the whole record and all of the evidence, finds and holds that the Employee and Carrier involved in this dispute are respectively Employee and Carrier within the meaning of the Railway Labor Act, as amended, and that the Board has jurisdiction over the dispute involved herein.

The basic facts are undisputed. On November 28, 1983, the Claimant forwarded two copies of an application for a leave of absence to Roadmaster Brook Nelson at 325 Spencer, West Chicago, Illinois. The request was necessitated due to being convicted on

charges of delivery of controlled substances and drug conspiracy.

The request, regardless of when it was received, was denied.

After the Claimant had been absent from service for more than 30 calendar days, he was advised by a letter dated December 30, 1983, that his employment was terminated effective that date.

During the handling of the claim on the property, the Parties discussions were limited to arguments whether, under Rule 54, the Carrier was obligated to grant the Claimant a leave of absence. Our scope of review is necessarily limited to that issue and those arguments.

Rule 54 states:

"Employees will be granted leave of absence when they can be spared without interference to the service, but not to exceed six months within a calendar year, except when serving on committees for the Brotherhood of Maintenance of Way Employees, or in case of sickness or injury of the employee or a member of his immediate family.

"An employee who fails to report for duty at the expiration of leave of absence will be considered out of service.

"Employees who enter business or engage in other employment while on leave of absence will forfeit their seniority unless special arrangements shall have been made by agreement between the Officer in Charge of Labor Relations and the General Chairman.

"An employee desiring to remain away from service must obtain permission from his Supervising Officer. All authorized absences of thirty (30) calendar days or more will be in writing and made a matter of record on regularly prescribed form and copy of same will be furnished employee.

"Employees elected or appointed to full time official positions of the Brotherhood will be granted leave of absence for the terms of their office.

"An employee receiving a disability annuity under provisions of the Railroad Retirement Act will retain seniority until he attains the age of 65, but his assigned position will be bulletined as a permanent vacancy. Should he recover

sufficiently to resume service prior to reaching the age of 65, he will be considered as in possession (sic) of displacing rights."


The Organization argues that under Rule 54, the Carrier was obligated to grant the leave of absence and thus, had they granted it, the Claimant would not have been terminated. The Carrier argues that they were not obligated to grant the leave of absence.

It is the opinion of the Board that no violation of the Agreement occurred. While Rule 54 may significantly constrict Management's discretion in granting leaves, there is no reason to believe the Parties intended to require the Carrier to grant all leave requests -- no matter what the reason. It is well established that incarceration is not a valid basis to request a leave of absence.

Accordingly, under the unique facts and circumstances of this case, the Claim is denied.

AWARD:

The Claim is denied.


Gil Vernon, Chairman


H. G. Harper, Employee Member


Barry E. Simon, Carrier Member

Dated: Jan 17 1986