

PUBLIC LAW BOARD NO. 3241

In the Matter of:	)	National Mediation Board
	)	Administrator
	)	
BROTHERHOOD OF MAINTENANCE OF	)	
WAY EMPLOYEES,	)	
	)	
Organization,	)	
and	)	
	)	
UNION PACIFIC RAILROAD	)	Case No. 44
COMPANY,	)	Award No. 44
	)	
Carrier.	)	
_____		

Hearing Date: June 4, 1992  
Hearing Location: Sacramento, California  
Date of Award: April 16, 1993

MEMBERS OF THE BOARD

Employees' Member: C. F. Foose  
Carrier Member: D. A. Ring  
Neutral Member: John B. LaRocco

ORGANIZATION'S STATEMENT OF THE CLAIM

1. That the Carrier violated the provisions of the current Agreement when it erroneously dismissed Track Laborer S. L. Ballard without first according Claimant a fair and impartial hearing. Said action being excessive, capricious and in abuse of discretion.
2. The Carrier shall be required to reinstate Claimant to his former position with seniority and all other rights restored unimpaired, and compensation for all wage loss suffered as a result of the above referred to violation.

OPINION OF THE BOARD

This Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act as amended; that this Board has jurisdiction over the parties and the subject matter of the dispute herein; that this Board is duly constituted by an Agreement dated July 23, 1982; and that all parties were given due notice of the hearing held on this matter.

Claimant entered the Carrier's service on June 6, 1984. In early January, 1989, Claimant contended that, due to a 1985 injury, he was subject to a twenty-five pound lifting restriction. Because it could not find any evidence of the physical restriction, the Carrier removed Claimant from service on January 11, 1989 until a doctor could release him for work without any physical restriction.

In a letter the Carrier sent to Claimant on January 11, 1989, the Carrier informed Claimant that, if it was necessary for him to take a leave of absence, he should tender medical reasons, including a doctor's statement, supporting his leave request.

On January 17, 1989, Claimant requested a medical leave of absence but did not submit any supporting documentation. In reply, the Carrier asked Claimant for a medical statement describing his current physical condition. Apparently, Claimant's supplied a medical statement because, on February 22, 1989, the Carrier approved Claimant for a leave of absence through February 17, 1989. However, since the approved leave of absence had already expired, the Carrier informed Claimant that extensions of the leave of absence are not automatic and so, he would have to submit another leave request with a doctor's statement showing the need for another leave of absence to renew the leave.

Since Claimant neither reported to duty nor submitted a proper leave of absence request, the Carrier, on March 20, 1989, wrote Claimant reminding him that he would have to request a leave of absence and tender supporting documentation. Two days later, Claimant requested a leave of absence but did not submit any medical statement.

On April 3, the Carrier directed Claimant to submit a doctor's statement and warned Claimant that it could not grant his request for a leave of absence without medical documentation.

By April 17, 1989, the Carrier had not received a response from Claimant and thus, it invoked Rule 44, which provides:

When requirements of the service permit, on request, employees will be granted leave of absence by the officers to whom they report. Employees on leave of absence engaging in other employment will lose seniority unless special provision therefore has been made with the proper officer of the railroad. Leave of absence will not be granted for more than ninety days in one year except in case of injury or sickness.

An employee who fails to report for duty at the expiration of leave of absence shall be considered as forfeiting seniority and will terminate his employment relationship with the company, except that when failure to report on time is the result of unavoidable delay, the leave will be extended to include such delay.

On May 2, 1989, the Carrier received a medical statement, dated April 24, 1989, indicating that Claimant was medically unfit to return to work. The Carrier contended that the medical statement came too late because Rule 44 had already operated to terminate Claimant's seniority on April 17, 1989.

This Board extensively discussed the operation of Rule 44 in Award No. 38. For the reasons more fully set forth in Award No. 38, we must deny this claim.

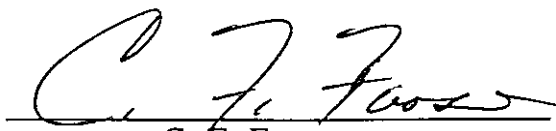
Claimant's leave of absence expired on February 17, 1989 and the Carrier could have triggered the self-executing provisions of Rule 44 at that time. However, the Carrier gave Claimant several opportunities to request a retroactive leave of absence to avoid the harsh consequences of Rule 44. The Carrier sent Claimant several reminders telling him that, before the Carrier could grant his request for medical leave of absence, he would have to submit medical documentation showing the need to be away from work. Employees must supply the required medical statements when requesting a leave of absence for medical reasons. NRAB Third Division Award No. 28764 (Lieberman).

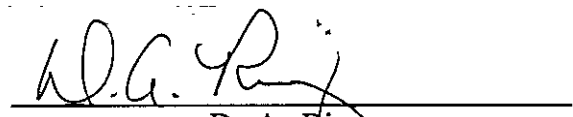
In sum, Claimant created his own predicament by recklessly ignoring the Carrier's request for medical substantiation. The Carrier properly invoked Rule 44 on April 17, 1989, which operated to permanently sever Claimant's seniority. Thus, the medical statement which the Carrier received on May 2, 1989 could not undue Claimant's forfeiture of his seniority.

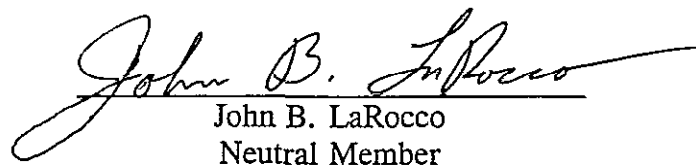
**AWARD AND ORDER**

Claim denied.

Dated: April 16, 1993

  
C. F. Foose  
Employees' Member

  
D. A. Ring  
Carrier Member

  
John B. LaRocco  
Neutral Member