

PUBLIC LAW BOARD NO. 3530

Award No.: 95

Case No.: 95

PARTIES TO DISPUTE

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM

Claimant, D. R. Ross, Rt. 1, Box 288, Rice, VA 23966 was dismissed from service on July 20, 1988 for alleged failure to report to work thereby forfeiting his seniority. Claim was filed by the Employees in accordance with Railway Labor Act. Employees request he be reinstated with pay for all lost time with vacation and seniority rights unimpaired.

FINDINGS

By letter dated May 2, 1988, Claimant was notified that he had been absent from his assignment since April 26, 1988. This letter directed Claimant to contact the Carrier within ten days or forfeit his seniority. Claimant called the Carrier on May 6, and stated that he was off duty because he had been under a doctor's care. At that time he was directed to provide proof of his disability. By letter dated May 20, 1988, Claimant was again directed to provide written proof of his disability with a statement from his doctor. Claimant received the May 20 letter, but did not respond. By letter dated July 1, 1988, Claimant was advised that no explanation had been received, and he was directed to return to work within ten days or

forfeit his seniority. Claimant received but did not respond to the July 1 letter.

On September 20, the Organization requested Claimant be restored, and attached a brief explanatory statement from Dr. G. J. Crosby releasing Claimant from his care as of September 15, 1988. The Carrier denied the Organization's request to conduct an investigation on this matter.

Rules 30 (h) and 16 provide as follows:

Rule 30 (h)

An employee who considers himself otherwise unjustly treated shall have the same right of hearing and appeal as provided for in this Rule 30 if written request is made to his immediate superior within ten calendar days of cause of complaint. This rule does not apply to grievances in connection with time claims, which must be submitted and progressed in accordance with the provisions of Rule 31.

Rule 16

Furloughed employed desiring to retain their seniority rights must file their address and phone number in writing with the Supervisor-MW Personnel, Roanoke, Virginia, within ten calendar days from the date of the first reduction occurring after the effective date of this Rule 16. (Furloughed B&B Sub-Department employees should advise the Supervisor-B&B on their home divisions.) Thereafter, renewal of such notice will not be required after such first notice is filed, but the Supervisor-MW Personnel or Supervisor-B&B must be immediately notified in writing of any change in address and telephone number. Failure to employees to comply with these provisions (except phone number) or to return to the service within ten calendar days after being officially notified in writing, without satisfactory reason for not doing so, or unless a leave of absence has been obtained, will cause forfeiture of all seniority rights.

The issue to be resolved in this dispute is whether the Carrier

violated the Agreement when it determined that Claimant had forfeited his seniority rights; and if so, what should the remedy be.

The position of the Carrier is that it properly determined that Claimant had forfeited his seniority rights because Rule 16 was self-executing, and the Organization presented no evidence that Claimant was disabled. Claimant, according to Carrier, simply chose not to respond to his recall notice. Carrier maintains that the evidence of Claimant's failure to respond to recall notices is clear on its face and contends that the Organization has failed to meet its burden of proof because it has made no showing that Claimant was suffering from a medical disability. Carrier further contends that the alleged evidence of Claimant's disability was submitted well after the ten day deadlines set forth in the letters and as required by Rule 16. Moreover, Carrier maintains that the notes from Dr. Crosby do not prove Claimant was disabled, rather they only indicate that Claimant was under Crosby's care and that Claimant had visited Crosby on eight occasions. Finally, the Carrier maintains that since Rule 16 is self-executing, there is no obligation to conduct an investigation.

The position of the Organization is that the Carrier violated the Agreement when it determined that Claimant had forfeited his seniority rights for the reason that he was under a doctor's care during the period from May to November 1988. The Organization contends, by implication, that Claimant was disabled during this period and could not report for duty.

After review of the entire record, the Board finds that the Carrier did


not violate the Agreement when it determined that Claimant had forfeited his seniority rights.

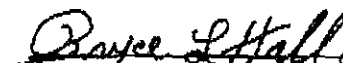
The Carrier has established by substantive credible evidence in the record that Claimant was absent from his assignment, and that when he was recalled to his assignment he failed to respond adequately. Further, the Organization has failed to meet its burden of showing that Claimant was disabled and thus justifiably absent from his assignment. Carrier has a right to expect employees to report to work regularly or to present an adequate explanation. Rule 16, which is self-executing, embodies this concept. The evidence in the record is clear that Claimant simply was not at work, and did not provide an adequate excuse. Under the provisions of the Agreement, he forfeited his seniority rights. The Carrier was not required to conduct a formal investigation of this matter, under the circumstances.

AWARD

Claim denied.


Neutral Member


Carrier Member


Organization Member

Date: Dec 13, 1989