

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4768

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

BURLINGTON NORTHERN RAILWAY COMPANY

AWARD NO. 73

Carrier File No. 1 MWB 92-08-20C

Organization File No. S-P-475-W

STATEMENT OF CLAIM

1. The Agreement was violated when the Carrier improperly closed the service record of employe G. L. Whitehead on May 5, 1992.

2. The Claimant shall be reinstated to service with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered, including credit for qualifying time for vacation and personal leave days as well as health and welfare benefits and he shall be allowed any promotional opportunities lost while he was withheld from service. In addition, the Carrier shall convene the unjust treatment hearing to be held in connection with the Claimant's disqualification as a cook which, after being scheduled for May 8, 1993, was unilaterally canceled by the Carrier.

FINDINGS

The Claimant, a Cook, asked for a medical leave of absence in March 1992 as the result of an esophageal condition. To support this request, he provided a note from his personal physician which requested that the Claimant be put "on light duty" (not on leave of absence) for a period of six weeks.

In response to this, the Manager, Manpower Planning wrote to the Claimant on March 27, 1992 as follows:

Per your request dated March 27, 1992, you are hereby granted a 5-day medical leave of absence from March 30, 1992 through April 6, 1992.

It is understood that you may return to work prior to April 6, 1992, with a release from your doctor and notification to your supervisor. Also, you will be required to take a physical examination from a company physician prior to returning. Please contact your road-master for a physical order form.

If you need an extension of this leave, please contact this office in writing prior to expiration of your leave with a note from your doctor recommending the additional time.

The Claimant failed to request a leave extension prior to April 6, 1992. The record shows no medical requests from his physician for a leave of absence at any time. Rule 15E states:

An employee failing to report for duty on or before the expiration of their leave of absence will forfeit all seniority rights, unless an extension is obtained.

Under this self-executing provision, it is clear that the Claimant forfeited his seniority as of April 7, 1992. At the same time, however, the Carrier wrote to the Claimant, seeking his compliance under Rule 9, Retention of Seniority by Laid Off Employees, on the supposition that the Claimant should have reported to work following his one-week leave to exercise his seniority.

In its letter, the Carrier gave the Claimant until April 27, 1992 to provide necessary information. The Claimant contended that he did not receive the letter until April 29. Even then, however, he did not take action to provide the necessary information. He

was then notified by letter dated May 5, 1992, that, in accord with Rule 9, his seniority had been terminated.

The Board finds that the Claimant's seniority was properly terminated under Rule 15E. He nevertheless had a further opportunity to retain employment under Rule 9, but he failed to take the necessary steps. Pending disciplinary measures as to the Claimant's performance as a Cook are without relevance here. There remains no rational basis to sustain the claim.

A W A R D

Claim denied.



HERBERT L. MARX, Jr, Chairman and Neutral Member



MARK J. SCHAPPAUGH, Employee Member



D. J. MERRELL, Carrier Member

NEW YORK, NY

DATED: February 14, 1995