

PUBLIC LAW BOARD NO. 5396

Parties
to the
Dispute

BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYES

vs.

SOUTHERN PACIFIC TRANSPORTATION
COMPANY
(Western Lines)

PLB Case No. 34

NMB Case No. 34

STATEMENT OF CLAIM

1. That the Carrier violated the provisions of the current Agreement when it refused to allow Mr. M. Jones to return to work after a successful rehabilitation from an auto accident on September 12, 1994. Said action being excessive, unduly harsh and in abuse of discretion.
2. That the Carrier is obligated, in accordance with Rule 33(d), to accept the documented evidence and statements of the Claimant's doctors which were sent to the Claimant's supervisors, as adequate evidence of the Claimant's disability and thereafter consider him to be on a medical leave.

FINDINGS

On October 19, 1994, Carrier sent Claimant by certified mail to his Postal box what is referred to in this case as an Appendix R letter. It stated that Carrier's records indicated that

Claimant had been absent from work since September 12, 1994, and that, effective October 19, his seniority and employment was terminated in accordance with Appendix R of the parties' Agreement. The letter went on to add that "If you desire, you may, within thirty (30) days, submit notification that you request a hearing be held under Rule 45 of the current agreement." The letter, about which the Post Office notified Claimant on October 21, October 27, and November 8, was not picked up and was returned to sender, unclaimed. A hearing was not requested and Carrier maintains that Claimant's seniority was terminated properly.

The Organization points out that at the time of the incident, Claimant was on a leave of absence for a physical disability in accordance with Rule 33(d). He was unable to return to work until April 3, 1995. When he sought to resume his job, he was informed that his seniority had been terminated.

The Organization argues that if the letter was returned to Carrier on or shortly after November 8, the certified mail was not available to Claimant for the full thirty days allowed by Appendix R. Claimant kept Carrier informed of his condition on October 19 by sending a doctor's update on his status by fax. Additional updates were sent by fax on November 28, 1994, and March 10, 1995. Carrier disregarded this information.

This Board has reviewed the entire record of this case and has strong doubts about Claimant's position in this dispute. Several of the medical forms that he sent to Carrier indicate that his doctor had released him to return to full work earlier than April 3, 1995 (e.g., January 1, and March 13). At the same time, no plausible explanation was given for why he did not receive a certified letter sent to his address of record. This Board has long held that employees may not hang back and refuse to accept correspondence sent by their employer by recognized means and then claim a lack of proper notification.

It appears to this Board that Claimant took the position that he would not return to work until he personally elected to do so. Claimant had a work commitment to his employer that he did not fulfill. A termination of seniority was appropriate under the circumstances.

AWARD

Claim denied.

C.H. Gold

C.H. Gold,
Neutral Chairman

C.F. Foose

C.F. Foose,
Employee Member

1-7-98

Date of Approval

D.A. Ring

D.A. Ring,
Carrier Member