

PUBLIC LAW BOARD NO. 1760

Award No. 146

Case No. 146

File No. MW-FTW-92-37

Parties Brotherhood of Maintenance of Way Employes
to and
Dispute Norfolk and Western Railway Company
 (former Wabash)

Statement
of Claim: G. F. Jones-Forfeited seniority-failure to respond.

Findings: The Board has jurisdiction by reason of the parties
Agreement establishing this Board therefor.

Claimant G. F. Jones who was on furlough was recalled to service on May 4, 1992 and therein was advised to either contact the office for an appointment for a return to work physical examination or to provide Carrier with proof of continuing disability within 10 days of receipt of said letter, which was received by the Claimant on May 6, 1991.

The Claimant under date of May 9, 1992 responded with a May 4, 1992 note from Dr. Schoedinger which stated that the Claimant was under his care and was to remain off until after his next unspecified appointment and if any questions in the matter should be taken up with the doctor's office. However, Claimant's response was not sent to the General Division Engineer but rather to a Norfolk Southern post office box at Ft. Wayne, IN.

During the week of May 11, Carrier, because of the absence of any medical information, telephoned Dr. Schoedinger's office but was unable to obtain any information absent the Claimant's approval.

Absent proof of disability and the Claimant's lack of proper response to the General Division Engineer's May 4, letter the Carrier, on May 22, 1991, wrote Claimant advising him that he forfeited his seniority rights and was deemed to have quit the service of the Carrier.

The claim was filed by the Union on July 24, 1992 asserting Rules 3, 4, 23 and 30 in support of their position. The Carrier asserted Rule 16 in its support of its actions. Each party cited Board awards in support of their respective positions.

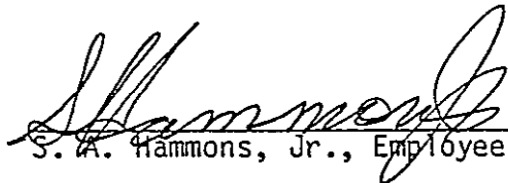
Rule 16 - Retention of Rights, is applicable to furloughed employees. It states, in part:

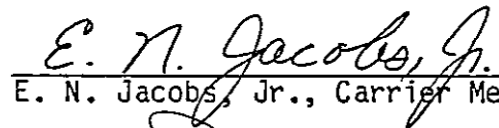
"Failure of employees... to return to service within ten calendar days after being officially notified in writing, without satisfactory reason for doing so, or unless a leave of absence has been obtained, will cause forfeiture of all seniority rights."

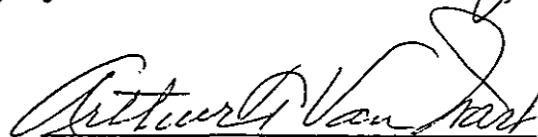
Said rule is self executing and does not require the holding of an investigation before moving thereunder. While there was not full compliance had with Rule 16 there does appear to be a conflict as to the quantum of proof required in this case. Because of the conflicts in the record, this matter would be better served by the reinstatement of this Claimant's seniority. The Claimant will be conditionally returned to service with all rights unimpaired but without payment for the time out of service. He will be required, of course, to have a return to work physical examination.

Award: Claim disposed of as per findings.

Order: Carrier is directed to make this Award effective within thirty (30) days of date of issuance shown below.


S. A. Hammons, Jr., Employee Member


E. N. Jacobs, Jr., Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued December 30, 1993.