

BEFORE PUBLIC LAW BOARD NO. 1837
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
AND
NORFOLK AND WESTERN RAILWAY COMPANY

Award No. 83

STATEMENT OF CLAIM: Claim of the Brotherhood that:

Claim on behalf of J. G. Harkenrider requesting that he be restored to service and paid for time lost, as a result of his forfeiture of seniority by his failure/refusal to respond to written notification to report for a return-to-work physical examination following his completion of a DARS rehabilitation program.

Upon the whole record and all the evidence, after hearing, the Board finds that the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended, and this board is duly constituted by agreement under Public Law 89-456 and has jurisdiction of the parties and subject matter.

This award is based on the facts and circumstances of this particular case and shall not serve as a precedent in any other case.

This Board has reviewed the record in this case and we find that the Carrier has presented sufficient proof that the Claimant forfeited his seniority when he didn't show up for work after he was called back to work after completing the DARS Program. The record reveals that after completing the DARS rehabilitation, the Claimant failed to contact the Division Office and present himself for duty. He was then contacted by the

Division Engineer's Office 30 days later to determine his status. He stated at that time that he desired to remain off for medical reasons. He was told to provide medical information to support his medical excuse and the Carrier received nothing from him. He was then ordered to return to service in a letter dated May 29, 1992. The Claimant received the letter on June 2, 1992, but failed to contact the Carrier. The Carrier issued a letter June 15, 1992, advising the Claimant that he had forfeited all of his seniority rights because he had failed to respond to that letter.


The Carrier is relying on the self-executing provisions of Rules 5(A) and 49(c). The record is un rebutted that the Claimant failed to contact the Carrier after he was told he must report within ten days.

Although the Organization contends that the Carrier had no right to remove the Claimant from service without a full hearing, this Board has upheld the self-executing principle of the related Rules in this case.

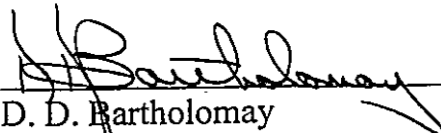
The Claimant ignored the instructions from the Carrier and did not provide the Carrier with a doctor's release. This Board find nothing wrong in the Carrier considering this Claimant as one who walked away from his job and forfeited his seniority. Therefore, the claim must be denied.

AWARD


Claim denied.



Peter R. Meyers
Neutral Member



D. D. Bartholomay
Organization Member



E. N. Jacobs, Jr.
Carrier Member

DATED: 1-3-95

DATED: December 21, 1994