

PUBLIC LAW BOARD NO. 2960

AWARD NO. **152**
CASE NO. 264

PARTIES TO DISPUTE

Brotherhood of Maintenance of Way Employees

and

Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- "1. The Carrier violated the Agreement when it terminated the seniority of Trackman J. L. Hadley (Organization File 8KB-4414 T; Carrier File 81-88-158).
- "2. Claimant J. L. Hadley shall be reinstated to service with seniority and all other rights unimpaired and compensated for all wage loss suffered."

OPINION OF THE BOARD:

This Board, upon the whole record and all of the evidence, finds and holds that the Employee and Carrier involved in this dispute are respectively Employee and Carrier within the meaning of the Railway Labor Act, as amended, and that the Board has jurisdiction over the dispute involved herein.

On May 4, 1988 the Claimant, who was furloughed at the time, filed for a leave absence for the period of May 4 to December 31, 1988.

On July 19, 1988, the following letter was sent to the Claimant:

"On May 4, 1988, you made out an application for a leave of absence. Your stated reason for the leave was

personal illness in the family. Subsequent to your application being received, it was approved.

"The Carrier is currently progressing a forced recall of all employees in your zone, and the status of your leave of absence was discussed. Your leave had an expiration date of December 1, 1988. According to Mr. C. P. Swedberg, Roadmaster - Waukegan, you advised him that you had another job and didn't want to return to work this year. Mr. Swedberg confirmed on July 14, 1988, that you were working at Midwest Construction, 100 E. 7th Street, Winthrop Harbor, Illinois 60096. This employment violates the terms of the leave of absence as listed under Rule 54, paragraph C on page 35 of the current Agreement between the Chicago and North Western Transportation Company and the Brotherhood of Maintenance of Way Employees effective June 1, 1985. This rule states that an employee will not engage in other employment while on a leave of absence.

"In compliance with the terms of this Agreement, you are herewith notified that you have forfeited your seniority in the B.M.W.E. crafts in which you held seniority."

It is noted that nothing in this record contradicts the Carrier's assertion that the Claimant was engaged in outside employment.

The claim protests as improper, the termination of the Claimant's seniority pursuant to Rule 54. The relevant portion of Rule 54 reads as follows:

"(a) An employee will be granted a leave of absence when they can be spared without interference to the service but in no case for a period longer than six (6) months in any twelve (12) consecutive month period except by written permission of the Director of Labor Relations and the General Chairman. Seniority will not be affected when absent from the service by reason of serving on committees, personal injury, sickness of an employee or his immediate family.

"(b) An employee who fails to report for duty at the expiration of leave of absence will be considered out of service.

"(c) Employees who enter business or engage in other

employment while on leave of absence will forfeit their seniority unless special arrangements shall have been made by agreement between the Director of Labor Relations and the General Chairman."

The Organization makes a variety of arguments as to why paragraph "c" ought not to be enforced in this case. However, none of these arguments are compelling enough to overcome the plain facts of this case and the unambiguous language of paragraph "c". The plain fact is the Claimant filed, in writing, a leave of absence request and that he engaged in other employment while on that leave. Nothing suggests that he didn't do so of his own free will or that he was coerced into doing so. As for the assertion that he was duped into filing for leave, we do not find sufficient evidence to support this. In fact, the Claimant should have been keenly aware of the prohibition against outside employment while on leave. Immediately above his signature on the leave of absence form the following words appear:

"I understand that failure to report for duty on or before expiration date will result in loss of seniority rights and termination of employment relationship. I also understand that I am not to engage in outside business or accept other employment while on leave of absence unless written permission has been secured from proper authority."

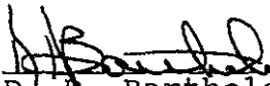
In view of these facts and the self-executing provisions of Rule 54, the Board cannot reverse the termination of the Claimant's seniority.

AWARD

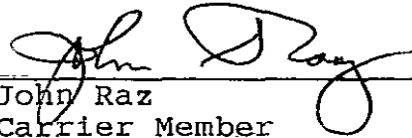
The claim is denied.



Gil Vernon, Chairman



D. D. Bartholomay
Employee Member



John Raz
Carrier Member

Dated: 4-30-90