

PUBLIC LAW BOARD NO. 4950

NEW JERSEY TRANSIT RAIL OPERATIONS, INC. :
"Carrier" : Case No. 25
vs. :
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES : Award No. 15
"Organization" :

STATEMENT OF CASES

M. L. Thorne - Forfeiture of Seniority

OPINION OF THE BOARD

Carrier maintains that Claimant was absent without permission from October 13 through 27, 1988 from his position as Trackman. Carrier further asserts that by this absence Claimant forfeited all seniority by violating Rule 27 (b), which reads as follows:

Except for sickness or disability, or under circumstances beyond his control, an employee who is absent in excess of fourteen (14) consecutive days without receiving permission from his supervisor will forfeit all seniority under this Agreement. The employee and the General Chairman will be furnished a letter notifying them of such forfeiture of seniority. The employee or his representative may appeal from such action under Rule 26, Section 3.

The Organization raises a number of defenses on behalf of Claimant, including that his absence on the dates in question was legitimately caused by an illness. Carrier maintains that progression of this claim was procedurally defective, as the Union initiated its appeal three days in excess of the time

limits set forth by the applicable Rule. In addition, Carrier contends that Claimant was not so incapacitated as to preclude a phone call during his absence, that Carrier was not informed of Claimant's status until 20 days after his forfeiture, and that there is reason to question the validity of the doctor's note submitted by Claimant.

The Board has determined that the claim must be denied.

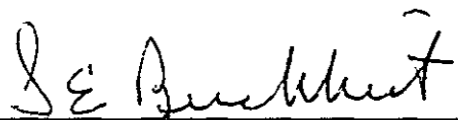
The record evidence clearly establishes that Claimant was absent without permission for at least 14 consecutive days. While Claimant may have been ill during this period, there is no reason to believe that any possible illness was so severe that it precluded Claimant from contacting Carrier and advising of his absence and the reason for it. In these circumstances, Rule 27 (b) is applicable. As its terms expressly indicate, it is a self-executing provision that calls for forfeiture of all seniority. This Board has no authority to modify the language that both parties have agreed to in this Rule.

AWARD

Claim denied.


W. B. Murphy
Carrier Member


W. E. LaRue
Organization Member


S. E. Buchheit
Neutral Member