

PUBLIC LAW BOARD NO. 4950

NEW JERSEY TRANSIT RAIL OPERATIONS, INC. :
"Carrier" : Case No. 26
vs. :
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES : Award No. 3
"Organization" :

STATEMENT OF CASES

K. Darge - Forfeiture of Seniority

OPINION OF THE BOARD

Carrier maintains that Claimant was absent from his position from February 23 to April 4, 1989 without providing proper notification. Carrier further asserts that by this absence Claimant forfeited all seniority by violating Rule 27 (b) which reads as follows:

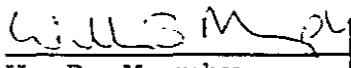
Except for sickness or disability, or under circumstances beyond his control, an employee who is absent in excess of fourteen (14) consecutive days without receiving permission from his supervisor will forfeit all seniority under this Agreement. The employee and the General Chairman will be furnished 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 argues that Claimant was during the time in question a patient in a rehabilitation program. The Organization further contends that Carrier was aware of Claimant's status and his involvement in the program during this time period, and that no forfeiture of seniority is therefore appropriate.

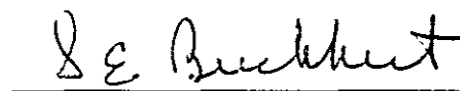
The Board has determined that the claim must be denied. The record does not establish that Claimant kept Carrier properly appraised of his status and that circumstances beyond Claimant's control prevented him from doing so. Claimant did not stay in touch with Carrier during the period in question. There is no documentation in the record which supports any contention to the contrary. 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