

PUBLIC LAW BOARD – NO. 6461

Case No. 11

Award No. 11

PARTIES

Brotherhood of Maintenance of Way Employees

to

-and-

DISPUTE:

Grand Trunk Western Railway

STATEMENT OF CLAIM:

“Claim in behalf of Mr. R. Duncan. This is the result of an April 2, 2002 letter sent to Mr. Duncan informing that he had forfeited all seniority under Rule 4, Section 3

Request all wages, credits and benefits beginning March 25, 2002 and continuing, due to violations of Rule 4, Section 3 and Rule 22.”

FINDINGS: The following is the sequence of events involved in this case:

1. On February 11 and 26, 2002, the Carrier wrote to the claimant and advised that the 2002 Track Program Season was about to start and, since he was in a furloughed status over 90 days, a return to work physical examination would be required prior to his return to service. They instructed him where to take his physical and emphasized that it was his responsibility to report for a return to work physical. They also informed him that he would not be allowed to return to service until they had the results of his examination
2. On March 19, 2002, the Carrier sent the claimant a certified letter, which he received on March 20, 2002, wherein he was formally recalled to service effective Monday, March 25, 2002. The Carrier also pointed out in the letter that he had not taken his return to work physical.
3. On March 25, 2002, the claimant reported to the work site without having taken the required physical examination. He was sent home and advised that he could not return to service because he had not been physically examined
4. On April 2, 2002, the Carrier sent the claimant a certified letter advising him that he had forfeited his seniority pursuant to Rule 4, Section 3 of the BMWE Agreement
5. On April 4, 2002, the claimant went to the medical clinic where he had been previously instructed to report. Latter that day, he called the Carrier and told them that he had taken a return to work physical, however, the Carrier advised him that it was too late, in that he had voluntarily forfeited his seniority because he did not return to service on or about March 26, 2002

The Carrier contends that Rule 4, Section 3, clearly stipulates that an employee “must return to service within seven days from the date notified by certified mail” They assert that the phrase “return to service” means that an employee must complete whatever prerequisite action is necessary to return to service, and perform service within the 7-day time limit listed in Rule 4. They also point to the fact that the collective bargaining agreement does not restrict or preclude the Carrier from requiring employees to be physically examined prior to their return to service from furlough.

The Carrier also asserts that the claimant is no stranger to the recall from furlough physical examination requirement. They point to the fact that since his date of hire in 1988, he had been furloughed 7 times for more than 90 consecutive days, and on each occasion he took a physical examination prior to his return to service. They contend that the only logical reason why the claimant deliberately tried to return to service without first taking the required physical examination, was to evade the drug test, knowing that if he tested positive, he would have automatically returned to a dismissed status without right of appeal.

The Organization asserts the agreement does not state that an employee must have a physical examination prior to their return to work. They contend, in any event, that he complied with the requirements of Rule 4, as evidenced by the fact that he reported for work within the prescribed time limit, but was sent home.

After due study of the entire record, including the arguments presented by the parties in support of their respective positions in this case, the Board finds the claim to be non-meritorious.

The recall from furlough process, that includes a required return to duty physical examination, was not new to the claimant, and the Board is satisfied that the Carrier exercised due diligence

when it clearly and repeatedly informed the claimant what was expected from him prior to his return to service. We found no evidence in the record of any "extenuating circumstances beyond his control", thus, one can only speculate as to why he failed to comply with the Carrier's instructions. Therefore, we find the claimant failed to comply with the provisions of Rule 4, and he must bear the consequences of his actions.

AWARD: The claim is denied


Francis J. Domzalski
Neutral Member


Marilyn J. Kovacs
Carrier Member


Perry K. Geller, Sr
Organization Member

Dated: 4-16-03