

**SPECIAL BOARD OF ADJUSTMENT NO. 1016**

AWARD NOS. 135  
CASE NO. 135

PARTIES TO  
THE DISPUTE: Brotherhood of Maintenance of Way Employees

vs.

Consolidated Rail Corporation

ARBITRATOR: Gerald E. Wallin

DECISIONS: Claim sustained in accordance with the Findings of the Board.

DATE: May 21, 2001

**STATEMENT OF CLAIM:**

“Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier improperly terminated the seniority of Mr. J. D. Moseley on June 18, 1996 for failure to report to service following recall (System Docket MW-4402).
2. As a consequence of the violation referred to in Part (1) above, Mr. J. D. Moseley’s foreman seniority date shall be restored as it existed prior to June 18, 1996 and he shall be compensated for all wage loss suffered with proper credit for benefits and vacation purposes.”

**FINDINGS OF THE BOARD:**

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.


The record indicates that the Claimant, who had been on furloughed status for over 180 days, was properly recalled to service on a Regional gang. After taking appropriate action to satisfy medical requirements, Claimant failed to report to his assignment as of the date instructed. The unusual handling with respect to obtaining medical qualification in this particular case led to some controversy as to when the ten day time frame specified by rule expired. However, it

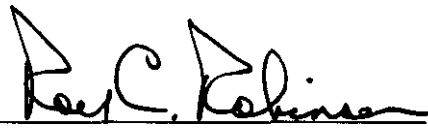
is clear that on the morning of the date he was expected to report for duty, Claimant telephoned the Carrier and only asserted, as excuse for his failure to report, that he was unable to timely arrange air transportation from Arizona to Pitcaim, Pennsylvania (There is suggestion in the record that this may have been in part because of financial reasons). At that point Claimant was issued a June 18, 1996 letter advising of forfeiture of his Regional seniority. Subsequently, Claimant rejected employment opportunity for furloughed District employees on other Regional gangs offered him based on his Columbus District seniority and also rejected an offer to take a position on the gang to which originally recalled.


The applicable rule provides for forfeiture of seniority except when there is satisfactory evidence that failure to timely report was due to circumstances beyond the employee's control. Due to the unique mitigating and extenuating circumstances present in the record, the Board finds there is no basis to award any back pay as requested; but, the June 18, 1996 letter advising of forfeiture of Regional seniority is rescinded.

AWARD:

Claim sustained in accordance with the Findings of the Board.

  
Gerald E. Wallin, Chairman  
and Neutral Member

  
Roy C. Robinson,  
Organization Member

  
Dennis L. Kerby,  
Carrier Member