

**NATIONAL MEDIATION BOARD
SPECIAL BOARD OF ADJUSTMENT NO. 1016**

John C. Fletcher, Chairman & Neutral Member
Mark J. Schappaugh, Employee Member
Jeffrey H. Burton, Carrier Member

**BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYEES**

and

CONSOLIDATED RAIL CORPORATION

Award No. 89

*Date of Hearing - February 21, 1995
Date of Award - June 30, 1995*

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The termination of the seniority of employee T. Janes for alleged absence without permission in excess of fourteen (14) consecutive days was arbitrary and in violation of the Agreement (System Docket MW-3046)
2. As a consequence of the above-stated violation, the Claimant shall be reinstated to service with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered.

FINDINGS:

Special Board of Adjustment No. 1016, upon the whole record and all of the evidence, finds and holds that the Employee(s) and the Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the disputes(s) herein; and, that the parties to the dispute(s) were given due notice of the hearing thereon and did participate therein.

Claimant, a furloughed employee at the time, was recalled to service to work on Mobile Gang 231. After passing his return to work physical and working on April 1, 1993, Claimant absented himself from service without oral or written permission. Ten days later Claimant contacted Carrier's System Production Engineer and requested a leave of absence to attend to civil matters involving the custody of his son. Claimant was advised to submit a written request, with appropriate documentation supporting the length of leave needed. Ten days later Claimant's attorney advised Carrier that future court dates would require his attendance, but no specific date was mentioned. Claimant was told that this information was not sufficient, and was given three more days within which to provide additional information to support the leave request. Neither Claimant nor his attorney contacted Carrier further.

On May 14, 1993, Claimant was advised that he had lost his seniority under Rule 28(b). A timely claim was filed challenging this forfeiture. The Organization contended that the trauma of the custody fight over Claimant's son was sufficient to negate the automatic forfeiture requirements of Rule 28(b).

Rule 28(b) provides in pertinent part:

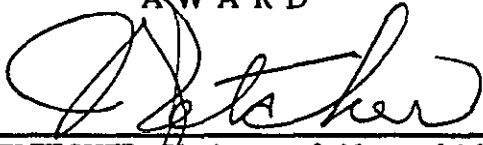
(b) Except for sickness or disability, or under circumstances beyond his control, an employee who is absent in excess of fourteen (14) consecutive days without receiving permission from his supervisor will forfeit all seniority under this Agreement.

While the Board can sympathize with Claimant when he wanted to be close at hand during a traumatic custody fight, it does not find this reason as sufficient to void the automatic seniority forfeiture provisions of Rule 28(b). There is no evidence that Claimant was sick or disabled at the time, so as to be unable to work as a Trackman. Further, "circumstances beyond his control" is of no comfort to him, because he was seeking a leave of absence, and may well have been given one if he had provided the information Carrier requested. Instead, Claimant ignored Carrier's extension within which additional information supporting his leave request could have been provided. It cannot be said that he was unaware of the consequences of ignoring the request. Further, there is no showing that he was not able to work after the three day extension expired.

Claimant was absent in excess of fourteen consecutive days without permission. A forfeiture of seniority was required under the Rule. The claim is without merit. It will be denied.

A W A R D

Claim denied.


John C. FLETCHER, Chairman & Neutral Member


Mark J. SCHAPPAUGH
Employee Member


Jeffrey H. BURTON
Carrier Member

Dated at Mount Prospect, Illinois, June 30, 1995