

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 924

CASE NO. 156

Award 140

PARTIES: Brotherhood of Maintenance of Way Employees

TO :

DISPUTE: Chicago and North Western Transportation Company

STATEMENT OF CLAIM: Claim of the System Committee of the
Brotherhood that:

1. The Carrier violated the controlling Agreement when it improperly terminated the seniority of V. Rodriguez (Employee File 3KB-4420T; Carrier File 81-89-5).

2. Claimant Rodriguez shall be reinstated with all rights unimpaired, full seniority, compensated for all lost time, and be made whole for all losses caused by this improper termination.

FINDINGS:

Claimant Victor Rodriguez was employed by the Carrier as a trackman at DeKalb, Illinois.

On August 8, 1988, the Carrier notified the Claimant that his last recorded work day was July 7, 1988, and that he had been terminated from service as of August 7, 1988, for allegedly being absent from work for over thirty (30 days) without requesting such absence in writing through the submission of the leave of absence form, this being in violation of Rule 54, which reads as follows:

(d) An employee desiring to remain away from service must obtain permission from his supervising officer. All authorized absences of thirty (30) calendar days or more will be in writing and made a matter of record on the regularly prescribed form and copy of same will be furnished the employee and the General Chairman.

The Organization appealed the Carrier's determination in writing; and on March 10, 1989, the Carrier affirmed its position and denied the claim for lack of support from schedule rules and agreements.

This Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence to support the finding

that the Claimant violated the rule by not applying, in writing, for a leave of absence. Rule 54 (d) requires that every request for absence in excess of twenty-nine (29) days must be in writing on the appropriate leave of absence form. In this case, the Claimant did not make any contact with the Carrier after his initial phone call, and he did not file a leave of absence form required by Rule 54 (d).

Once this Board has determined that there is sufficient evidence to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary, or capricious.

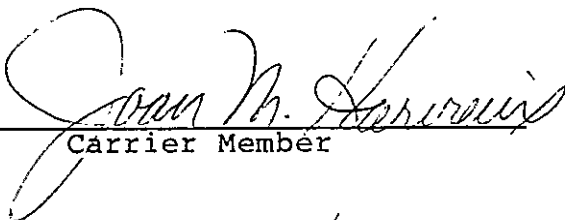
In the case at hand, the Claimant was terminated. His injury occurred on July 10, 1988, and he was ready to return to work on August 22, 1988. Unfortunately, his seniority had already been terminated on August 7, 1988, for his failure to properly apply for a leave of absence. Although there is no question of a rule violation, this Board finds that the Carrier's action in terminating his employment was unreasonable, arbitrary, and capricious. The Grievant deserves another chance to demonstrate to the Carrier that he can be a successful railroad employee. Therefore, this Board orders that the Claimant be reinstated without back pay and that the period that he was off be treated as a lengthy suspension.

AWARD:

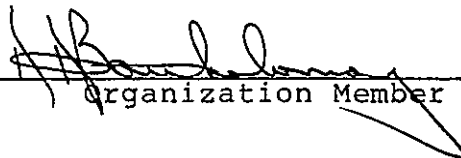
Claim sustained in part. The Claimant is to be returned to work,
but without back pay.



PETER R. MEYERS
Neutral Member



Carrier Member



Organization Member

Dated: 12/17/90