

SPECIAL BOARD OF ADJUSTMENT NO. 924

PARTIES: Brotherhood of Maintenance of Way Employees Award No. 5
TO : Docket No. 5
DISPUTE: Chicago and North Western Transportation Company

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

- (1) The Carrier violated the effective Agreement when it unilaterally and arbitrarily terminated the seniority of Lanney H. Spencer while he was recovering from tendonitis in his right elbow which was aggravated by his work.
- (2) Claimant Lanney H. Spencer shall be allowed the remedy prescribed in Rule 20 of the effective Agreement."

FINDINGS:

The Board, upon the whole record and all the evidence, finds and holds that the employees and the Carrier involved, are respectively employees and Carrier within the meaning of the Railway Labor Act, as amended, and that the Board has jurisdiction over the dispute herein.

The record shows that the claimant was removed from the seniority roster as a Bridge and Building Carpenter on August 26, 1981, for allegedly being absent from work since April 24, 1981, without a proper leave of absence.

After claimant was removed from the seniority roster, representatives of the Organization requested a hearing under Rule 20 of the applicable Agreement. The request was granted and the hearing was held on October 14, 1981. A transcript of the hearing, which was rather lengthy, has been made a part of the record. Claimant was present throughout the hearing and was represented by Kathy Oates, an attorney. The General Chairman of the Organization was also present.

In the hearing held on October 14, 1981, it was developed that on August 26, 1981, Carrier's Assistant Division Manager-Engineering, had notified claimant on August 26, 1981:

"Dear Mr. Spencer:

According to my records you have not worked your position as carpenter on the East St. Paul B&E Crew since April 22, 1981 with vacation being paid for the dates of April 23 and 24, 1981.

"As you have failed to comply with provisions of the current agreement between the Transportation Company and the Brotherhood of Maintenance of Way Employees, Rule 54, which requires that employees must have proper 'leave of absence' for absences of 30 or more calendar days; it is necessary for me to consider you as having forfeited your seniority, and your name is being deleted from the Twin Cities Division Seniority Roster.

Yours truly,

/s/ N. H. Clark
Ass't. Division Manager-Engineering."

Rule 54 of the applicable collective bargaining Agreement, referred to in the letter of August 26, 1981, reads in parts:

"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 regularly prescribed form and copy of same will be furnished employee."

The Board has carefully reviewed the transcript of the hearing and the entire record in the dispute. The hearing contains substantial evidence that between April 27, 1981, and August 26, 1981, claimant was advised by various employees and officials of the Carrier on numerous occasions of the necessity of claimant completing and returning "Leave of Absence" forms contemplated by that portion of Rule 54 quoted above. There is evidence that one set of leave of absence papers was received in the office of Assistant Vice President and Division Manager (with no evidence as to the date of such receipt), but the papers were returned to the claimant due to incomplete information. There is no record of receipt of completed forms until such papers were received from claimant dated August 28, 1981, two days after his termination.

It is the conclusion of the Board, after carefully considering the competing arguments, that the Carrier has properly applied the collective bargaining Agreement as written. As had been frequently stated, it is not the function of a Board of this nature to do equity, but to apply the Agreement as written. Further, we have no authority to decide any issues concerning State or Federal laws or Constitutional provisions.

A W A R D

Claim denied.

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Paul C. Carter
Chairman, Neutral Member

John D. Crawford
Carrier Member

A. B. Harper
Labor Member

Date: Nov. 28, 1983