

Special Board of Adjustment No. 956.

PARTIES
TO
DISPUTE:

Brotherhood of Maintenance of Way Employees
and
New Jersey Transit Rail Operations, Inc.

STATEMENT
OF
CLAIM:

The dismissal of Trackman Walter Jenkins was in violation of the Agreement, particularly Rules 26(a) and 27(b) and claimant shall be reinstated without loss of compensation, including overtime, and without loss of seniority and vacation rights and any other benefits enjoyed by claimant prior to dismissal.

FINDINGS:

Carrier maintains that claimant forfeited all seniority by violating Rule 27(b). Rule 27(b) reads as follows:

"Except for sickness or disability, or under circumstances beyond his control, an employee who is absent in excess of 14 consecutive days without receiving permission from his supervisor will forfeit all seniority under the agreement. The employee and the General Foreman will be furnished a letter notifying them of such forfeiture of seniority. The employee or his representative may appeal such action under Rule 26, Section 3."

The record establishes that claimant was absent in excess of 14 days -- October 31 through November 13, 1985, and November 14, 1985.

While Petitioner contends that claimant had been granted a personal day off for his absence of October 31, 1985, in a personal discussion with Supervisor Mike Ferulli, Ferulli denied that the personal day was granted and Carrier's pay records do not indicate that claimant was paid for that day. We are not in a valid position to rule on this credibility question, since, as an appeals board, we have no occasion to observe the witnesses' demeanor or to hear them testify.

A hearing was not required in this case since Rule 27(b), as its terms expressly indicate, is a self-executing provision that calls for forfeiture of all seniority. This Board has no authority to modify the language that both parties have agreed to in this Rule.

AWARD: Claim denied.

Adopted at Newark, N.J. July 1, 1987.



Harold M. Weston, Chairman



Carrier Member



Employee Member