

Special Board of Adjustment No. 956

PARTIES
TO
DISPUTE:

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

STATEMENT
OF
CLAIM

Claim of the Brotherhood:

The dismissal of Claimant L. Height was in violation of the Agreement, particularly Rule 27(b) and Rule 7 of the collective bargaining agreement. The 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 fourteen (14) consecutive days without receiving permission from his supervisor will forfeit all seniority under this Agreement. The employee and the General Chairman will be furnished a letter notifying them of such forfeiture of seniority. The employee or his representative may appeal from such action under Rule 26, Section 3."

The record establishes that Claimant was absent in excess of 14 days.

On January 30, 1987, Claimant requested a leave of absence in accordance with the provisions of Rule 7 of the controlling agreement. The leave of absence was denied by an appropriate NJTRO official on February 4, 1987. Simultaneous with the denial, the Claimant was told to report to work as usual.

Notwithstanding, because the Claimant was incarcerated at the time, he failed to report back to work. He was absent from his position for 14 consecutive days on January 29, 30, 31 and February 1 through February 11, 1987. As a result Claimant placed himself in violation of Rule 27(b).

The Claimant was notified that he had forfeited his seniority by letter dated February 17, 1987. The Organization filed an appeal which was properly progressed on the property and was denied.

The Organization argues that the leave of absence provision in the agreement (Rule 7) is applicable. However, this provision does not in of itself grant an employee the absolute right to be granted a leave of absence. It does allow the Carrier the flexibility to grant or deny a request for leave based on the reason given by the employee and the requirements of service. While the Organization argued that the reason given by the Claimant for requesting his leave was reasonable and satisfactory, this Board has clearly established that incarceration is neither an exception to Rule 27(b) nor is it a satisfactory reason.

In dealing with a prior dispute between Conrail and the Brotherhood of Maintenance of Way Employees in a forfeiture case under

language identical to Rule 27, it was decided in Public Law Board No. 3514, Award No. 31 that:

"Confinement in jail does not constitute unavoidable absence or provide a valid basis for an exception to Rule 28. See Third Division Awards 24606 and 22868, e.g. It was claimant's own fault that he was not able to protect service for Carrier during the lengthy period he was absent."

A like ruling was made in Third Division Award No. 26704, which dealt with a similar claim that arose on Conrail's property.

"On August 5, 1985, the Carrier terminated the employment of the Claimant under the self-executing provision of Rule 28. The Claimant had been absent from work without permission since July 8, 1985.

There is no evidence of record that the circumstances of the Claimant's absence prevented him from fulfilling his obligation to notify the Carrier. In particular, numerous Awards of this Board (see Third Division Awards 24606, 22868, 21228, 24760) and various Public Law Boards (especially see PLB 3514, Award #31) have held that confinement in jail does not constitute unavoidable absence for good cause."

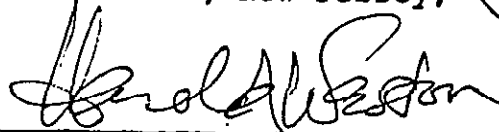
It was made known to the Claimant that his request for leave had been denied by the Carrier and as such the employee was not granted permission to be absent from his position.

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, New Jersey,

January 10, 1949.



Harold M. Weston, Chairman


Carrier Member


Employee Member