

AWARD NO. 53
CASE NO. 53

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

Claim of the Brotherhood:

The dismissal of Claimant K. Joyce was in violation of the Agreement, particularly Rule 27(b) 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.

The Organization contends that the Claimant was disabled and presents ample information proving the Claimant's infirmity. The Carrier took no issue with the fact that the Claimant was indeed unable to work due to his infirmity. The Carrier does, however, take issue with the Claimant's inability to contact and inform the Carrier of his infirmity. The nature of the Claimant's alleged illness is not a mitigating circumstance which would render the employee totally incapacitated to the extent that his employer could not have been notified.

Rule 27(b) is quite specific. It mandates that the employee must notify his supervisor and receive permission for any type of absenteeism. Certain exceptions are provided under the rule for failure to notify a supervisor of an absence, but the record does not support that any such exceptions would apply in this case. The employee failed to inform his supervisor or any Carrier official of his infirmity, and absented himself from work for more than 14 days. This is a definite violation of Rule 27(b), which is self executing. Such absenteeism, without notification to a supervisor, is tantamount to an employee's abandonment of his employment with the Carrier.

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.

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AWARD: Claim denied.

Adopted at Newark, New Jersey, *January 10, 1950*⁹⁰



Harold M. Weston, Chairman

Will B. Murphy
Carrier Member

SN. E. R. R.
Employee Member