

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 P. Franklin was in violation of the Agreement, particularly Rule 27 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.

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Claimant claims to have called the Trouble Desk to relay a message to his supervisor of a car accident he had been involved with. The Carrier submits that the Claimant did not properly report off from work in accordance with Rule 27(b). The Carrier submits that an employee who calls the Carrier merely to inform that he will not report to work on a given date has not, by that action, requested or received permission to be absent by the provisions of Rule 27(b).

The doctor's notes mentioned by Petitioner were not presented at the times of absence. They were only received after Claimant had been notified that he had forfeited his seniority. There is no evidence that Claimant's supervisor was notified in a reasonably timely fashion or that Claimant could not report for work because of his unsatisfactory physical condition.

The medical evidence submitted by the Organization is, at best, confusing. One notice is dated September 24, 1986, stating that the patient may return to service on October 2, 1986. Claimant's handwritten letter conflicts with the medical statement, in that he stated his accident didn't occur until October 3, 1986. The second medical statement is dated October 17, 1986 and states the patient may return to service on October 20, 1986. These confusing statements understandably cause the Carrier some concern.

Notwithstanding all the conflict, the Carrier offered the Claimant a conditional return to service on April 21, 1988. As of July 8, 1988, the Claimant and the Organization had not agreed to the leniency offer. Therefore, the Carrier withdrew the offer.

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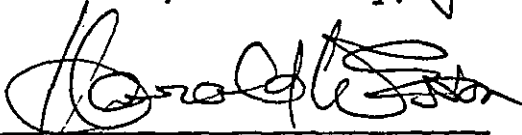
While the Board knows of no authority which requires a Claimant under the circumstances found here to agree to what amounts to a constructive abandonment of a claim for monetary damages by pleading for leniency and thus admitting guilt, it is however the Claimant who once such offer is made and not accepted rolls the dice in the final outcome of his future employment.


In this instance, Rule 27(b) is a self-executing rule, by the terms of the agreement. There is no evidence of record that circumstances of the Claimant's absence prevented him from fulfilling his obligation to notify the supervisor for such an extended period of absence. As a result, the Board has found no basis to set aside the decision of the Carrier in this instance.

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*, 19*90*.


Harold M. Weston, Chairman


Carrier Member


Employee Member