

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 586

Case No. 586
File 910567

Parties Brotherhood of Maintenance of Employees
to and
Dispute Union Pacific Railroad Company
 (Former Missouri Pacific Railroad)

Statement

of Claim: (1) Carrier violated the Agreement, especially Rule 2 and 5, when T. J. Perrino (SSN 465-94-8944) was terminated for failure to respond to recall.

(2) Claim in behalf of Mr. Perrino for wage loss suffered beginning April 3, 1991, until reinstated on January 24, 1992 and for restoration of his Machine Operator Helper seniority.

Findings: The Board has jurisdiction of this case by reason of the parties Agreement establishing this Board therefor.

Claimant, Machine Operator Timothy J. Perrino, while working as a Machine Operator/Helper on February 21, 1989, was injured while working on the job. He suffered an injury when told by the Machine Operator to jump from the machine before a collision occurred. Mr. Perrino was released to return to work June 19, 1990, and worked until July 11, 1990 when he laid off sick. He reportedly underwent surgery. He marked up on March 21, 1991 and returned to work on April 1, 1991. His supervisor discovered that his seniority had been terminated and so told the Claimant, then sent him home.

Rule 2(J) - Seniority Rights, in part pertinent, reads:

"...Failure to return to service within seven (7) calendar days after recall for irregular assignment, except in cases of physical disability when extension of time will be granted as provided in paragraph (f) of this rule after being notified (by mail or telegram at last address on file) will forfeit seniority in the class for which called."

The evidence offered in this case weighs more heavily in favor of the Carrier's position than that of the Employees. The record reflects that the Claimant settled his on duty injury claim on September 5, 1991 and the claim settlement payment made September 5, 1991 covered the period of time lost between February 21, 1989 and June 19, 1990 when he was released to duty.

The record fails to disclose any medical information, reportive or otherwise, that might be relied upon after the above mentioned settlement, particularly July through December of 1990. The only medical information of record appears in the Carrier file as Exhibit L and is dated November 6, 1990. It reflects rehabilitation therapy or back hardening, and was for a 6 week prospective treatment. Hence, the allegation or inference that he was medically tied up. The letter from Dr. J. N. Fierson, dated May 6, 1991, offers only a diagnosis of back injury and neck and stated that he was treated by a Dr. Eidman for the February 21 injury "to go back to work" and was able to resume regular duties May 7, 1991. Hence, there seems to be no reasonable rationale between the medical record above, in Carrier's Exhibit L of May 6, and that therein dated November 6, 1990. There is less relationship shown between the allegation of surgery after July 1990 and the settlement period (next day) ending June 19, 1990.

The Claimant's allegation that he sent a letter with a doctor's statement to a Niomi was denied by her and causes it to remain only as an allegation.


Rule 2 - Seniority Rights, is personal to this and all Claimants. Section (J) mandates personalization to protect seniority. It requires that the employee personally do something, to, if possible, respond by message or telephone as to his ability to be recalled or work. The Claimant's failure therefor is cause to support the denial of this claim.

This claim needs more than the imagination and innovative argument of the Union for support. The Union did manage to achieve restoration of some seniority. This claim will be denied.

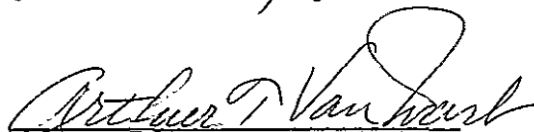
Award: Claim denied.



S. A. Hammons, Jr., Employee Member



Kathy Alexander, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued November 27, 1993.