

BEFORE SPECIAL BOARD OF ADJUSTMENT 924

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
CHICAGO & NORTH WESTERN TRANSPORTATION CO.

Case No. 234

Award No. 210

STATEMENT OF CLAIM: Claim of the Brotherhood that:

1. The Agreement was violated when the Carrier terminated the seniority of Machine Operator K. L. Wright in a letter dated July 1, 1993, (Organization File 9KB-6049T; Carrier's File 81-93-130).
2. Claimant K. L. Wright shall now be reinstated to service with seniority unimpaired and compensated for all wage loss suffered commencing May 11, 1993.

FINDINGS:

On April 21, 1993, the Claimant was involved in a vehicle accident. The Claimant continued working through May 3, 1993. On May 4, 1993, the Claimant went to the Jackson Park Hospital emergency room. On May 6, 1993, the Claimant returned to work. On May 10, 1993, Roadmaster Ray received a statement from Jackson Park Hospital. On May 11, 1993, the Claimant was removed from service until he provided the Carrier with a release from his doctor. Also, he was notified that he needed to obtain a leave of absence if he were to be off for more than 30 days.

On July 1, 1993, the Claimant was notified that he was being removed from the

seniority roster because he did not obtain the required leave of absence.

On July 2, 1993, the Claimant's personal physician released him to return to duty on August 3, 1993. However, since the Claimant was removed from the seniority roster, the Organization has filed a claim in his behalf for reinstatement with full seniority rights and payment for all lost time.

The claim was denied and since the parties were unable to resolve the issue, this matter now comes before this Board.

This Board has thoroughly reviewed the record in this case, and we find that the Claimant was involved in a vehicle accident on April 21, 1993. He worked from April 22, 1993, through May 3, 1993. On May 4, 1993, the Claimant went to Jackson Park Hospital's emergency room for treatment of an ailment and was given a release to return to work on May 6, 1993. The Claimant returned to work on May 6, 1993, and gave the roadmaster the doctor's release from Jackson Park Hospital. The Claimant continued to work until May 11, 1993.

At the close of work on May 11, 1993, the Claimant was told by the roadmaster that he was out of service until he brought in a release from his personal physician. The Claimant was unable to obtain such a release returning him to work until July 2, 1993. On that date, he obtained a note from Dr. J. G. Obregon, which stated that the Claimant had been under his care for injuries sustained in a work accident and that his disability period would be from May 11, 1993, through August 2, 1993. The note also stated that

the Claimant was still under Dr. Obregon's care and that he would be able to return to work on August 3, 1993.

The Carrier states in its argument that the Claimant was told by the roadmaster on May 11, 1993, when he was removed from service, that he must file for a leave of absence if he were to be off more than thirty days. The Claimant, in his written statement contained in the submission, denies that he was told that. The Claimant states simply that Mr. Ray told him that he was being removed from service until he obtained a release from his personal physician.

This Board recognizes that the Carrier rules require employees who desire to remain away from service for more than thirty days to file a written request for a leave of absence. However, in this case, there has been no showing that this Claimant desired to remain away from service for any period of time. He had come back to work with a release from a Jackson Park Hospital physician. It was the Carrier and its medical department that somehow determined it wanted an additional statement from his personal physician that he was able to return to work. It was the Carrier's representative that sent him home. At no point did the Claimant know that he would be off on a thirty calendar-day absence when he was sent home by the roadmaster. He denies being told by the roadmaster that he must file for a medical leave of absence. There was no sworn statement by the roadmaster in the file that indicates that he told the Claimant that. The Carrier simply states that "after discussing the injuries with the engineering and medical

department, Mr. Ray (the roadmaster), was advised to remove the Claimant from service until a release to work was received from his personal physician. Mr. Ray contacted Mr. Wright at 3:30 p.m. on May 11, 1993, to remove him from service and at that time notified him to fill out leave of absence papers."

As stated above, the question of whether or not the Claimant was told to fill out leave of absence papers is in dispute. However, it is not in dispute that it was the Carrier that sent the Claimant home after he had returned to work with a doctor's note.

Given the facts of this case, this Board cannot find that the Claimant walked away from his seniority or violated Rule 54, entitling the Carrier to terminate his employment for failure to obtain the appropriate leave.

This Claimant followed the orders and left work until he could obtain a release from his personal doctor. He was unable to obtain that release until August and turned it into the Carrier. There is nothing in writing in this file that supports the Carrier's position that the Claimant was told that, in order to maintain his seniority rights, he had to file the form requesting a leave of absence. This Board finds that to terminate the Claimant's seniority as a result of his failure to file for a medical leave of absence in this case, after he has served the Carrier since July of 1979, would be a gross injustice. Since this Board finds that the Claimant was ordered to remain away from work by the roadmaster after having reported for service and worked for several days, and there is simply insufficient evidence in the record that when he was taken off the job he was also ordered by the

roadmaster to file for a medical leave of absence, this Board finds that the Claimant cannot be held liable for violating the provisions of Rule 54 under the facts of this case.

This Board hereby orders that the Claimant shall be reinstated to service and that he shall be reimbursed for back pay commencing August 3, 1993, when his personal physician, Dr. J. G. Obregon, stated that he would be able to return to work.

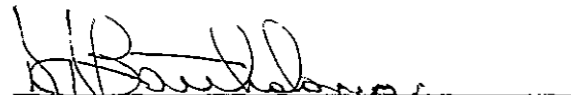
AWARD

Claim sustained. The Claimant is to be returned to service with back pay commencing August 3, 1993.


PETER R. MEYERS
Neutral Member


Carrier Member *DISSENT TO FOLLOW*

DATED: 1-30-95


Organization Member

DATED: January 30, 1995