

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 924

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
UNION PACIFIC RAILROAD COMPANY
(former Chicago & North Western Transportation Co.)**

Case No. 230

Award No. 214

STATEMENT OF CLAIM: Claim of the Brotherhood that:

1. The Carrier violated the Agreement when it improperly terminated the seniority of Mr. D. J. Seversen (Organization File 8KB-4982T; Carrier File 81-93-41).
2. Claimant D. J. Seversen shall be reinstated with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered.

FINDINGS:

On September 17, 1992, the Carrier received a request from the Claimant for a medical leave of absence due to an on-the-job injury that he had sustained on August 10, 1992. The Carrier denied the request for medical leave but informed the Claimant that it could accommodate him with another position as a flagger that the Claimant could perform within his medical restriction. The Carrier instructed the Claimant that he had to return to service within ten days or forfeit his seniority. The Claimant did not report for duty and subsequently, he was terminated. It was later learned that the Claimant did not report because he was in custody having been charged with conspiracy to distribute marijuana.

The Organization filed a claim challenging the termination.

The parties not being able to resolve the issue, this matter comes before this Board.

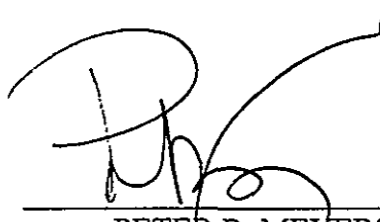
This Board has reviewed the record in this case and we find that there is sufficient evidence in the record to support the finding that the Claimant failed to return from his unauthorized leave to the flagging position which would fit within his work restrictions. Consequently, the Carrier properly found that the Claimant had voluntarily forfeited his seniority.

The Carrier is correct that Rule 54 does not automatically require the Carrier to grant a leave of absence to an employee simply because an employee requests one. The Carrier has a right to demand that medical documentation be provided and that the Claimant show up for work to a position which could accommodate the Claimant's medical restrictions. In this case, there was work available for the Claimant to perform in a position which accommodated his disability. In addition, the Claimant was not absent from service because of his injury. It is apparent from the record that he was absent from work as a result of the fact that he was incarcerated on a drug charge.

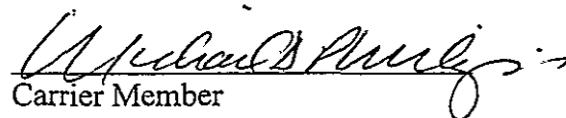
This Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated the Claimant's seniority in this case. Therefore, the claim must be denied.

AWARD

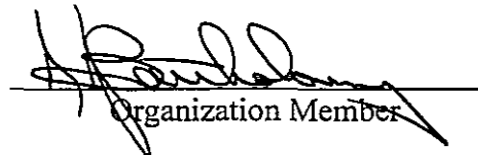
Claim denied.



 PETER R. MEYERS
 Neutral Member



 Carrier Member



 Organization Member

DATED: 3-10-98

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