

SPECIAL BOARD OF ADJUSTMENT NO. 924

Award No. 99
Docket No. 112

PARTIES: Brotherhood of Maintenance of Way Employes
TO :
DISPUTE: Chicago and North Western Transportation Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when Machine Operator Scott's seniority was terminated without just and sufficient cause. [Organization File 4SW-1074; Carrier File 81-86-33]
- (2) Claimant H.L. Scott shall have the letter of termination stricken from his record and must be returned to the appropriate Seniority Roster with all rights and seniority unimpaired."

FINDINGS:

This Board, upon the whole record and all the evidence, finds and holds that the employees and the Carrier involved are respectively employees and Carrier within the meaning of the Railway Labor Act as amended and that the Board has jurisdiction over the dispute herein.

On September 1, 1984, Claimant began a medical leave of absence, which expired on January 1, 1985. On January 3, 1985, Carrier sent Claimant a notice that he must either return to work or obtain an extension of his leave of absence. The notice was returned to Carrier as undelivered. Carrier made further attempts to reach Claimant by sending letters to Claimant in care of his ex-wife. On October 3, 1985, Claimant was notified that his seniority was terminated because his job had been abolished and he had neither returned to work nor filed a rights retainer. The Organization thereafter filed a claim on Claimant's behalf, challenging the termination of his seniority.

The Organization contends that Claimant received no effective notice of his duty to file for an extension of his leave. Carrier did not make a second attempt to reach Claimant at the address on file

with Carrier, which was Claimant's correct address. By filing his correct address, Claimant complied with Rule 10, which provides:

(a) Employees whose positions have been abolished or who have been displaced who desire to retain their seniority without displacing employees with less seniority must, within fifteen (15) calendar days, file their name and address with the Assistant Division Manager - Engineering and thereafter notify him in writing of any changes in address.

(b) An employee who is absent on vacation, suspension, or leave of absence when his job is abolished or he is displaced will have the same rights, provided such rights are exercised within fifteen (15) calendar days of his return to active service.

. . .

(d) Employees complying with this Rule will continue to accumulate seniority during the period they are furloughed.

The Organization asserts that Carrier improperly sent correspondence intended for Claimant to a person having no legal relationship to Claimant and to rely on that person's guarantees.

The Organization also argues that there is no merit to Carrier's assertion that Claimant had a duty to report for work at the end of his leave. The Organization contends that the fact that Carrier sent a request for extension of leave to Claimant establishes that Carrier's practice is to notify employees of the termination of leaves of absence and the need to submit a request for an extension. The Organization points out that upon receiving a full medical release from a Carrier physician, Claimant reported for service. The Organization contends that the claim should be sustained.

Carrier contends that because Claimant's leave expired and he did not file a rights retainer before October 3, 1985, Claimant failed to comply with Rule 10. Moreover, Claimant forfeited his seniority by failing to return to service when his leave expired. Carrier points to Rule 54, which provides that "[a]n employee who fails to report for

duty at the expiration of leave of absence will be considered out of service." Moreover, the leave of absence form expressly provides that failure to report for duty upon expiration of the leave will result in loss of seniority rights and termination of employment. Claimant acknowledged this condition on his application for the leave. Carrier therefore contends that Claimant's seniority was properly terminated, and the claim should be denied in its entirety.

This Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record to support the Carrier's action in terminating the Claimant's seniority.

The Claimant went on medical leave, terminating January 1, 1985, and executed the application for medical leave below the sentence which states:

I understand that failure to report for duty on or before expiration date will result in loss of seniority rights and termination of employment relationship. I also understand that I am not to engage in outside business or accept other employment while on leave of absence unless written permission has been secured from proper authority.

Moreover, Rule 54, governing leaves of absence, states clearly:

An employee who fails to report for duty at the expiration of leave of absence will be considered out of service.

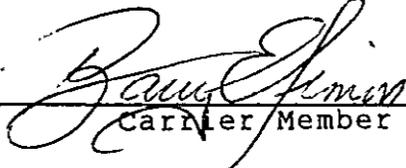
The Claimant failed to report for duty on or before January 1, 1985, and never even reported after the Carrier sent him a letter on January 3, 1985, requiring him to return to work or obtain an extension of his leave of absence. By the very terms of the leave of absence, the Claimant's failure to comply with the rules led to his loss of seniority. This Board can find no violation of the Claimant's rights by the Carrier; and, therefore, this claim must be denied.

Award:

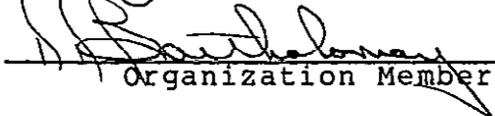
Claim denied.



Neutral Member



Carrier Member



Organization Member

Date: February 4, 1988