

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:

Request that the "Forfeiture of Seniority" imposed on Trackman O. G. Sherin be lifted and that he be reinstated to service without loss of seniority.

FINDINGS:

Claimant entered Carrier's service on May 8, 1985. About 2-1/3 years later, on September 11, 1987, he was found by Carrier to have forfeited his seniority by being absent without permission in excess of fourteen consecutive days beginning August 25, 1987.

Rule 27 concerns forfeiture of seniority for absenteeism. It reads as follows:

"(a) An employee unable to report for work for any reason must notify his supervisor as soon as possible.

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."

A self-executing provision, Rule 27 has been upheld in a number of awards. See e.g., Second Division Award 6801 and Third Division Award 19806. It has been agreed to by both parties and despite its drastic nature, we find no basis for disregarding its plain terms so long as the requirements of the Rule are satisfied and it is consistently and fairly applied.

The Organization duly appealed the forfeiture of seniority to the Manager, Labor Relations. It contends that claimant was ill during the period in question, that he provided Carrier with doctors' notes attesting to that condition and that he had informed Bob Landry of his illness. It also maintains that Carrier was made aware of the illness by earlier doctors' certificates.

If Bob Landry were in fact a supervisor or made by Carrier to appear as such in the eyes of employees, we would not accept a general denial by Carrier that it had been timely informed of claimant's illness. In view particularly of the highly technical nature of the forfeiture rule, it would have been necessary for Landry himself to respond to the allegation and to have that response set forth in the record.

However, no evidence has been introduced to show that Landry was a supervisor at the material times and Carrier has denied that he served in that capacity. Rule 27(a) clearly requires notification to a "supervisor" of inability on an employee's part to report to work "for any reason." Accordingly, petitioner's contention as to Bob Landry is not helpful to the claim.

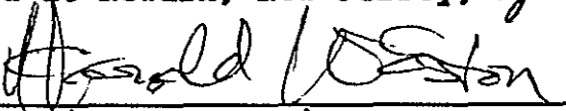
The doctors' notes mentioned by Petitioner were not presented at the times of absence. They were only received after claimant had been notified that he had forfeited his seniority. There is no evidence that claimant's supervisor was notified in reasonably timely fashion that claimant could not report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

Petitioner has shown that earlier doctor certificates were accepted as a basis for receiving permission to be absent when claimant was out disabled from June 24 to August 10, 1987. However, the record shows that claimant was released from the care of his physician and submitted to a return-to-duty physical examination and found qualified to return to service on August 12, 1987. In that setting, it was clearly necessary for him to receive permission from Carrier for a new round of absences that began on August 24, 1987.

. Carrier's concern about absences is not cavalier or unreasonable. After all, it is responsible for the safe and efficient operation of a railroad and in order to carry out that mission it must have employees who can be relied upon for steady service.

The Organization as well as Carrier have committed themselves to Rule 27 and this Board is without authority to ignore its requirements although it may find itself uncomfortable with forfeiture.

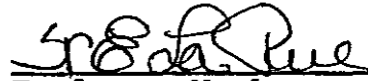
AWARD:**Claim denied.****Adopted at Newark, New Jersey, June 23 , 1988.**



Harold M. Weston, Chairman



Carrier Member



Employee Member