

AWARD NO. 49
CASE NO. 49

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

Claim of the Brotherhood:

The dismissal of Claimant S. Davis was in violation of the Agreement, particularly Rule 27 of the collective bargaining agreement. The Claimant shall be reinstated without loss of compensation, including overtime, and without loss of seniority and vacation rights and any other benefits enjoyed by Claimant prior to dismissal.

FINDINGS

Carrier maintains that Claimant forfeited all seniority by violating Rule 27(b). Rule 27(b) reads as follows:

"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."

The record establishes that Claimant was absent in excess of 14 days.

While the Organization has presented a doctor's notice of the Claimant's illness, such notice does not show that the Claimant was unable to comply with Rule 27(b) as a result of this illness, nor did it give ample reason why the Claimant did not notify his supervisor of his infirmity. Therefore, the Organization's position that this case is within the parameters of the exceptions given in Rule 27(b) is in error.

It may well be that on some alleged date the Claimant notified Mr. Diana in the Track Supervisor's office. However, the Carrier has stated clearly that Mr. Diana denies ever having received such information. No further proof was furnished by either the Claimant or the Organization; therefore, there does not exist any substantial proof that the Claimant complied with the provisions of Rule 27(b).

Rule 27(b), as its terms expressly indicate, is a self-executing provision that calls for forfeiture of all seniority. This Board has no authority to modify the language that both parties have agreed to in this Rule.

AWARD: Claim denied.

Adopted at Newark, New Jersey, *January 10*, 19*89*.


Harold M. Weston, Chairman


Carrier Member


Employee Member