

AWARD NO. 54
CASE NO. 54

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 G. A. Thomas 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.

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The Organization has argued that the Claimant in this case was in an automobile accident and was therefore unable to report for work and that the Carrier was notified of the accident by a letter received by a Ms. Sylvia Desporo and that Claimant was under a doctor's care. Consequently, the Organization maintains that the exception under Rule 27 should apply in this instance.

More than three months had elapsed since the alleged accident occurred before the doctor's note was submitted to the Carrier. Further, it was not until the appeal procedure was underway that the Carrier was informed that a letter allegedly had been sent at some unspecified time to a Ms. Sylvia Desporo.

While it may well have been that the Claimant was in an automobile accident and infirmed, the doctor's letter addressed to Mr. J. M. Savarese on September 10, 1987, failed to advise the Carrier of the facts and the reason for the delay in submitting such a letter, which was more than 72 days after the date of the notice of termination. This fact precludes the Board from invoking the exception provided in Rule 27.

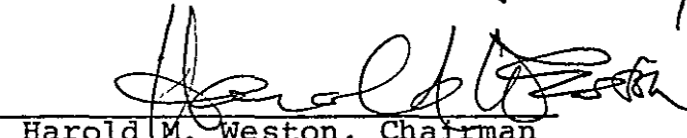
Further, there exists no evidence of the letter allegedly received by Ms. Desporo and the Carrier denies that such a letter was ever received. No information was submitted by either the Claimant or the Organization to prove the Carrier's receipt of this letter.


Rule 27 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.


In this case the plain terms and requirements of the Rule have been satisfied. 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 18*, 19*90*.


Harold M. Weston, Chairman


Carrier Member


Employee Member