

AWARD NO. 58  
CASE NO. 58

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. Terry was in violation of the Agreement, particularly Rule 27, and therefore, the Claimant shall be reinstated 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.

The Organization strenuously argues that the Claimant requested a leave of absence to return to school full time. Such request was allegedly confirmed by the timekeeper at Hoboken.

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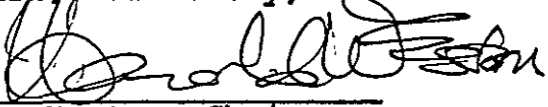
While a review of the record satisfactorily reveals to this Board that a leave of absence was requested and not granted, there exists no reasonable explanation why the employee did not fulfill his obligation to report to work except that he knew ahead of time that by not reporting, he would be subjecting himself to the self-executing conditions of Rule 27.

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, 1989<sup>90</sup>

  
Harold M. Weston, Chairman

  
Carrier Member

  
Employee Member