AWARD NO. 60
CASE NO. 60

Special Board of Adjustment No. 956

PARTIES TO DISPUTE: Brotherhood of Maintenance of Way Employes

and

New Jersey Transit Rail Operations, Inc.

STATEMENT OF CLAIM: Claim of the Brotherhood:

The dismissal of Claimant N. Miller 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 Claimant alleges that he notified the Carrier's Trouble Desk at some point, and the employee who accepted the call was allegedly to notify Claimant's superiors, there exists no facts concerning the name of this employee nor the date this was to have occurred.

Further, while such a notification may well be acceptable on a given day in order to comply with Rule 27(a), it is essential that an employee personally contact his appropriate supervisor at some point in order to comply with Rule 27(b). The only exception to this rule is where an employee is sick, disabled, or under other circumstances beyond his control, which would prevent his contacting his supervisor. This has not been found to be the case here.

After the Board's review of the positions of both parties as well as the record made on the property, we find that there exists no basis for overturning the Carrier's decision to terminate this employee.

A self-executing provision, Rule 27 has been upheld in a number of awards. (See e.g., Second Division Award No. 6801, Third Division Award No. 19806, and other recent awards too numerous to mention herein.) 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. In this case, it was the Claimant who failed to comply with the requirements and the plain terms of the agreement.

AWARD: Claim denied.

Adopted at Newark, New Jersey, January 16, 1980.

Harold M. Weston, Chairman

Carrier Member

Employee Member