

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:

- (a) The dismissal of Claimant Mathew Kent was arbitrary and capricious and an abuse of Carrier's discretion, in that Carrier failed to heed the procedures found in the Scheduled Agreement and reneged upon the promises made by Carrier's officials to the Claimant.
- (b) Claimant Kent shall be reinstated into Carrier's service with all seniority rights unimpaired.

FINDINGS

This case arises from the Organization's appeal and protest of the Carrier's action of September 25, 1985, whereby the Carrier notified the Claimant that his seniority had been forfeited under Rule 27 of the parties' Agreement due to his absence from work without permission in excess of fourteen (14) days.

Rule 27 of the Agreement reads as follows:

RULE 27 - ABSENT WITHOUT PERMISSION:

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

"(b) 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 pertinent facts are that at the time of the incident which led to the Carrier's forfeiture action under Rule 27, the Claimant was assigned as a Trackman on the Carrier's property and that by letter dated September 25, 1985, the Carrier's Assistant Engineer of Track, Ms. A. Conway, wrote the Claimant at his home address, advising that his seniority had been forfeited under Rule 27 due to his absence from work without permission in excess of fourteen (14) days.

On October 25, 1985, General Chairman L. W. Allen requested the letter be withdrawn from the Claimant's record since it was his understanding that Mr. Kent had verbally applied for a leave of absence. On October 7, 1985, the Engineer of Track replied to the General Chairman, stating Mr. Kent had not been granted a leave of absence.

The Carrier throughout this instant case has maintained that it acted properly. The record shows that Mr. Kent was in fact absent without permission from his position for fifteen (15) consecutive days and that no leave of absence had been granted by the Carrier nor was a written request made by the Claimant to any Carrier officer prior to his being notified of his forfeiture of seniority. The Carrier has further maintained that any leave of absence granted is based upon the

requirements of service and if satisfactory reasons is given for the leave of absence. In this instance, the Carrier maintains that incarceration is not a satisfactory reason.

The Organization has argued in behalf of Claimant Kent that the Claimant verbally requested leave of absence and that based upon the past experience, the Claimant believed a leave of absence had been granted him. Further, in view of the Claimant's extenuating circumstances and the evidence offered in this case, the absences were beyond the Claimant's control, as set forth in Rule 27(b). The Organization has offered documented statements by the Fair Oaks Hospital, a rehabilitation center, a statement by the Claimant's attorney, and a character reference from Mr. Ralph Froehlich, Sheriff of Union County, to support the position of the Claimant.

After due study of the foregoing, and of the whole record, inclusive of the arguments presented by the parties in support of their respective positions in the case, it is concluded that the claim lacks merit and that the Carrier's position is supported by the record.

Specifically, it is found that the Carrier's September 25, 1985 notice to Claimant of the forfeiture of his seniority was well based, inasmuch as the Claimant's incarceration did not constitute an excusable reason for his absence from work for a period which triggered the self-executing provisions of Rule 27. In dealing with a prior dispute between Conrail and the Brotherhood of Maintenance of

Way Employees in a forfeiture case under language identical to Rule 27, it was decided in Public Law Board No. 3514, Award No. 31 that:

"Confinement in jail does not constitute unavoidable absence or provide a valid basis for an exception to Rule 28. See Third Division Awards 24606 and 22868, e.g. It was claimant's own fault that he was not able to protect service for Carrier during the lengthy period he was absent."

A like ruling was made in Third Division Award No. 26704, which dealt with a similar claim that arose on Conrail's property.

"On August 5, 1985, the Carrier terminated the employment of the Claimant under the self-executing provision of Rule 28. The Claimant had been absent from work without permission since July 8, 1985.

There is no evidence of record that the circumstances of the Claimant's absence prevented him from fulfilling his obligation to notify the Carrier. In particular, numerous Awards of this Board (see Third Division Awards 24606, 22868, 21228, 24760) and various Public Law Boards (especially see PLB 3514, Award #31) have held that confinement in jail does not constitute unavoidable absence for good cause."

Moreover, the record contains no convincing evidence that a leave of absence was granted by the Claimant's supervisor, and in fact, there is no record of any written request to the supervisor by the Claimant for a leave of absence as required by Rule 7.

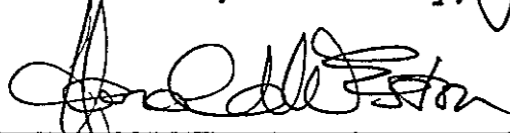
This same principle was enumerated in Award No. 32 of this Board:

"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, *January 10*⁹⁰, 1989.



Harold M. Weston, Chairman



Carrier Member



Employee Member