

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 14020
Docket No. 13893
10-2-NRAB-00002-080033**

The Second Division consisted of the regular members and in addition Referee James E. Conway when award was rendered.

PARTIES TO DISPUTE: (
(International Brotherhood of Electrical Workers
(BNSF Railway Company

STATEMENT OF CLAIM:

- “1. That in violation of the controlling Agreement, Rule 16 in particular, representatives of the BNSF Railway Company unjustly and arbitrarily considered Mechanical Department Electrician Vince Scofield out of service and removed his name from the Havre, Montana Mechanical Department Roster.**
- 2. That accordingly, the BNSF Railway Company be required to re-establish the seniority date and return to service Havre, Montana Mechanical Department Electrician Vince Scofield and that he be made whole for all losses incurred during the time he was held out of service until he is returned to duty.”**

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

The Organization here takes exception to the Carrier's action in removing the Claimant from the seniority list on November 8, 2007, pursuant to Rule 16 of the governing Agreement on grounds that he had failed to either properly extend or return timely from a leave of absence previously granted.

The underlying facts are straightforward. Following an off duty injury, the Claimant had completed the necessary forms, supplied the documentation the Carrier required and had been granted a leave of absence from September 21 through October 5, 2007. On October 5, 2007, he presented himself at the Havre Diesel Shop and requested an extension of that leave. After again completing the paperwork required in that connection and providing the Carrier with appropriate medical documentation from his physician, his leave was extended from October 5 to October 22, 2007.

On October 23, 2007, the Claimant attempted to extend that leave once again by phoning the Havre Diesel Shop and requesting that the application for extension be faxed to him for completion. Upon being informed that he would be required to pick up the forms at the shop and complete them in person, he did so. His leave was then again extended from October 23 to November 1, 2007.

It is undisputed that at approximately 3:30 P.M. on Friday, November 2, 2007, the Claimant called and spoke with General Foreman B. Bridges and again requested that the necessary paperwork for a further extension be faxed to him. Bridges states that he advised the Claimant he could not handle the request in that fashion and that he would again be required to come to the shop in person and fill out the forms as he had done in the past. Bridges states that he offered to remain at the shop if the Claimant planned to come that afternoon, or alternatively, he could come in on the following Monday, November 5, 2007, and deal with Administrative Assistant P. Buerkle.

Assistant Shop Superintendent C. Myers states that when the Claimant did not appear on either November 2 or November 5, he contacted Labor Relations to discuss the matter. When it was determined that the terms of Agreement Rule 16 (c)

were applicable, the Claimant was removed from service and his name was stricken from the IBEW seniority roster. That Rule provides as follows:

“An employee who fails to report for duty at the expiration of leave of absence shall be considered out of service, except that when failure to report on time is a result of unavoidable delay, the leave will be extended to include such delay.”

The Carrier takes the position that the matter has been handled strictly in accordance with the self-executing provisions of Rule 16 (c) and the Board thus has no basis for disturbing its action. The Claimant was well familiar with his obligations as they related to securing additional leave extensions, having gone to the shop, obtained and completed the necessary forms on several previous occasions. On November 5, however, he neither came to the shop as directed, nor called to offer any extenuating circumstances that may have excused his noncompliance.

The Claimant, in contrast, insists that he did come to the shop on Friday, November 2, but upon finding that Buerkle had left for the day, Bridges' office was vacant and Myers was on the phone, he decided to come back at a more convenient time and left the property, confident that his superiors had received his doctor's note explaining the need for a further extension of his LOA. On Monday, November 5, he returned to the shop at approximately 10:30 A.M. to complete the paperwork, but Buerkle was again not available. After waiting about ten minutes and finding both Myers and Bridges similarly unavailable, the Claimant decided to leave and return at a later date.

No evidence of extenuating circumstances is presented by the Organization in support of its request to exempt the Claimant from the operation of Rule 16. Indeed, it seems reasonably apparent that while the Claimant was fully aware of what he needed to do in order to extend his leave, perhaps in reliance on some shaky assumptions, he opted for a surprisingly low energy approach in working out a very simple problem. After being put on notice for a third time that his supervisors again expected an in-person application for a LOA extension, the Claimant essentially excused himself for a full week.

Form 1
Page 4

Award No. 14020
Docket No. 13893
10-2-NRAB-00002-080033

No compelling reasons are offered here for concluding that the Carrier's handling of the Claimant's situation offended the Agreement. Accordingly, the claim is denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 13th day of May 2010.