

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 14029
Docket No. 13914
10-2-NRAB-00002-100001**

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 Anthony Stremcha 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 Anthony Stremcha 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 facts underlying this dispute are not seriously contested. Following removal from service on January 26, 2008, for a Rule G violation, Claimant A. Stremcha was referred to EAP and, shortly thereafter, signed a waiver for a first violation of Rule S-28.5 relating to the use of alcohol and drugs. After satisfying the terms of that waiver, the Claimant returned to service on June 6, 2008.

On August 16, 2008, the Claimant advised Shop Superintendent C. Meyers that he had relapsed and was concerned with his ability to work safely. In consequence, he was again removed from service, referred back to EAP and requested and was granted successive medical leaves of absence from September 2008 through January 2009.

On January 20, 2009, the Claimant announced to his supervisor that he believed he would complete his current treatment program by March 15, 2009. His leave was accordingly extended through that date and General Foreman B. Bridges advised him he would be expected to report on March 16, 2009. Apparently as the result of some confusion between the parties, however, on February 4, 2009, the Claimant wrote to request an extension of his medical leave through March 4, 2009. Because his leave had already been approved through March 15, that request was placed in his personal file.

On March 4, the Claimant spoke with Bridges, under the impression that his authorized medical leave had expired. The Claimant indicated he was still undergoing treatment and requested an extension of leave through March 15 once again; whereupon he was again informed that such leave had already been approved, and he was expected back on March 16.

On March 6, 2009, the Claimant completed his treatment and was released to return to unrestricted service by the Carrier's Medical Officer, Dr. Clark, contingent upon continued compliance with recommendations. On March 16, however, after first leaving a message with his supervisor's Administrative Assistant

indicating that he would be returning to work, the Claimant called later in the day, spoke with Bridges as well as Shop Superintendent Price, and said he was not certain he would be returning because he was unsure "if his paperwork was in order." Bridges and Price assured him that he was cleared for duty, should report for work at 7:00 A.M. on March 17, and should visit with Price before commencing work because he had been off-duty for seven months.

At approximately 9:30 P.M. on March 16, the Claimant called and reported to the supervisor on duty that he was stuck in Wolf Point, Montana, with a transmission problem and was not sure he could make it in the next day. He then failed to either report or call on March 17. At 4:20 A.M. on March 18, after calling and expressing uncertainty as to whether he should report or not, he was advised by the supervisor on duty to call either Price or Bridges or report for duty, because pursuant to Price's instructions, he had no authority to lay the Claimant off. He neither reported nor called, however, and for a second day was marked AWOL.

On March 19, the Claimant called in at 6:50 A.M. and stated to the supervisor on duty that he would not be reporting. He was again instructed to call Bridges or Price or report, but failed to do so on March 20 and was marked AWOL for a third day.

On March 21, the Claimant called in at 4:45 A.M. He was informed that he was AWOL, was directed to report immediately to the shop, and acknowledged those instructions. Nonetheless, again the Claimant failed to report for duty or call on March 21, 22 or 23. After checking with EAP regarding possible new medical developments and with the IBEW Local Chairman to see if he had any further information, Price sent the Claimant a certified letter at the end of the day on March 23 informing him he was considered out of service and that his name was being removed from the seniority roster. In response, the Claimant called Price at 3:35 P.M. on March 25 and indicated that he had been afraid to report for fear of being tested and found in violation of the terms of his program

Rule 16 - LEAVE OF ABSENCE - Section (c) provides as follows:

"An employee who fails to report for duty at the expiration of leave of absence shall be considered out of the service, except that when failure

to report is the result of unavoidable delay, the leave will be extended to include such delay.”

Notwithstanding the Organization’s detailed and comprehensive argument on the Claimant’s behalf urging that his failure to report was the product of unavoidable delay and that the Carrier’s expectations were unreasonable in light of his severe illness, the dispositive facts here are not well aligned with that theory. The record indicates that the Claimant’s car troubles on March 16 do not explain his failure to report for work on successive days as directed. Rather, the explanation for that failure lies in the Claimant’s forthright admission that he declined to report for fear of again testing positive for prohibited substances.

Under the circumstances presented, the terms of Rule 15 (c) are self-executing. Having failed to report for duty following expiration of his medical leave or justified that failure by a showing of unavoidable delay, the Claimant was removed from service and the seniority roster consistent with the governing Rule. The Board must, therefore, deny the claim.

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 3rd day of November 2010.