

**NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION**

**Award No. 14167  
Docket No. 14025  
16-2-NRAB-00002-140062**

**The Second Division consisted of the regular members and in addition Referee Lamont E. Stallworth when award was rendered.**

**(Brotherhood Railway Carmen-Division of TCU/IAMAW  
PARTIES TO DISPUTE: (  
(The BNSF Railway Company**

**STATEMENT OF CLAIM:**

- “1. That the Burlington Northern Santa Fe violated the terms of the February 1, 2006 Agreement, specifically Rules 16, 35 and others, when on September 13, 2012, the Carrier dismissed Carmen Randall S. Everson from service for alleged failure to provide additional documentation to justify his continued absence.**
- 2. That accordingly, the Carrier be ordered to compensate the Claimant eight (8) hours pay at the pro-rata rate for each workday he is withheld from service commencing September 13, 2012 and continuing until his return to work.**
- 3. Additionally, the Carrier is ordered to make the Claimant whole as follows:**
  - 1. returned to service with seniority rights unimpaired;**
  - 2. made whole for all vacation rights;**
  - 3. made whole for all health, welfare insurance benefits;**
  - 4. made whole for pension benefits including Railroad Retirement and unemployment insurance;**
  - 5. made whole for any other benefits he would have earned during the time he is out of service;**
  - 6. made whole for all wages, lump sum payments, general wage increases and cost-of-living adjustments;**

7. paid for any overtime hours that he may have lost during his suspension; and
8. all correspondence and record of the investigation be removed from his personal record.”

**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.

At the time of this dispute, Claimant Randall S. Everson was a Carman at the Carrier's Havelock Shop in Lincoln, Nebraska. On July 3, 2012, after the Claimant was observed exhibiting strange behavior at work, the Carrier removed the Claimant from service and referred him to the Employee Assistance Program (EAP) for a mental health evaluation. To facilitate such an evaluation, the Carrier placed the Claimant on a 30-day leave of absence, concluding August 6, 2012.

When his initial 30-day leave of absence expired, the Carrier reminded the Claimant that, under Rule 16(c) of the Agreement, the Claimant was required to demonstrate that he was unable to return from the leave, and therefore required an extension of the leave, if he was to avoid being considered separated from the service. Rule 16(c) provides:

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

After the Carrier so prompted the Claimant, the physician treating the Claimant sent documentation to the Carrier based on which the Carrier approved a 30-day extension, through September 6, 2012, of the Claimant's leave of absence. On August 17, 2012, the Carrier sent the Claimant a letter advising the Claimant that he was granted the leave extension and enclosing related materials. Those materials and the Carrier's letter again informed the Claimant that "it is your responsibility to obtain an extension to your leave, if required," and that his failure to return to work or obtain a further extension of the leave before the leave expired would have the consequence set forth in Rule 16(c).

On September 5, 2012, as the extended leave of absence was about to expire, both the Claimant's General Foreman and his Shop Superintendent personally spoke to the Claimant, instructing him to immediately provide medical documentation from his doctor if he felt he was still unable to return to work. However, no such information or any request for a further leave extension was submitted by the Claimant or his doctor, and the Claimant did not report for duty upon the expiration of his leave. Therefore, on September 13, 2012, the Carrier sent the Claimant a letter advising him that he was considered out of the Carrier's service pursuant to Rule 16(c) of the Agreement.

On October 29, 2012, the Organization initiated the instant claim, contending that the Carrier violated Rules 16 and 35 of the Agreement by treating the Claimant's service as terminated without a Rule 35 investigation. Having carefully reviewed the record and circumstances, however, this Board cannot sustain the Organization's contentions.

Contrary to the contentions of the Organization, there is extensive arbitral authority for the proposition that the Carrier need not convene a Rule 35 investigation before considering an employee to be "out of the service" and thus terminated by virtue of the employee's failure to return to work on the expiration of a leave of absence. Numerous Arbitrators have characterized Rule 16(c) as "self-effectuating" by specifically stating that an employee who does not report upon expiration of a leave is "considered out of the service" unless the employee's failure to report is the result of unavoidable delay. See, e.g., Public Law Board 7052, Award No. 48. Rule 16(c) does not require that the Carrier conduct an investigation into the reasons for the employee's failure to report if, as in the instant case, the

employee does not request and seek to justify an extension of the leave. Thus, it is the conclusion of this Board that the employment of the Claimant was terminated by operation of Rule 16 of the Agreement, and not in violation of Rule 16, when the Claimant's leave of absence expired and he did not apply for an extension, without there being any need for a Rule 35 investigation.

Accordingly, the Board finds that the Carrier did not violate the Agreement in considering the employment of the Claimant terminated and so notifying him. Therefore, the Claim must be 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 20th day of December 2016.