

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35983
Docket No. SG-35899
02-3-99-3-921**

The Third Division consisted of the regular members and in addition Referee Nancy F. Eischen when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Union Pacific Railroad Company (former Missouri Pacific)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad (former Missouri Pacific):

Claim on behalf of T. R. Parsons for restoration of all seniority rights and benefits, including, but not limited to, payment for all lost time and restoration of all health and welfare benefits, account Carrier violated the current Signalmen’s Agreement, particularly Rules 28 and 33, when it stripped the Claimant of his seniority rights prior to the resolution of a dispute involving a medical leave of absence and dismissed the Claimant without benefit of an investigation. Carrier File No. 1171886. General Chairman’s File No. 99-12-K-D. BRS File Case No. 11149-MP.”

FINDINGS:

The Third 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.

On August 6, 1998, Signal Maintainer T. R. Parsons (Claimant) suffered an on-the-job injury. By letter dated September 4, 1998, Manager Field Engineering Administration S. E. Gottschalk requested updated medical documentation to determine the Claimant’s fitness for duty. The Claimant responded, reporting that he had forwarded the Carrier’s request to his personal physician to execute same.

On September 9, 1998, the Claimant’s personal physician submitted a “Union Pacific Railroad Medical Progress Report” on which he included Parson’s diagnosis, his

anticipated return-to-work date, and a notation indicating that the Claimant was scheduled for another examination on October 19, 1998.

Thereafter, on November 12, 1998, the Carrier sent the Claimant correspondence in which it erroneously named the Brotherhood of Maintenance of Way Employees as the Claimant's representative(s). The Claimant responded to the Carrier correcting the oversight, and stated that he was "unable to work as a result of an on duty personal injury and am under doctor care at this time." The Claimant went on to state that he had forwarded "all company instructions" to his doctor to handle.

On December 18, 1998, the Carrier sent the Claimant corrected correspondence, via certified mail, return receipt requested, informing him that:

"You have been absent without proper authority from your assignment for more than 30 days. Furthermore, you have been sent two requests to either supply medical documentation or return for service. To date, you have done neither.

As per Rule 33 of the Collective Bargaining Agreement between the Brotherhood of Railroad Signalmen and the Union Pacific Railroad the Carrier has not received any documentation to substantiate any leave of absence. You are hereby advised to return to service within five (5) calendar days after receipt of this letter, or forfeit all seniority rights."

On December 28, 1998, the Claimant responded to the Carrier's December 18 directive, stating that:

"In reference to your letter dated December 18, please find enclosed a copy of the Union Pacific Progress Report sent by my doctor as required in your letter dated September 4, 1998.

Also included are my letters dated September 14, 1998 and November 18, 1998 stating that I had complied with your request for medical documentation as required.

According to the BRS Chairman, supplying required Medical Progress Reports has constituted a request for medical leave of absence. In the event there has been a change in policy, please consider this a formal request for a medical leave of absence."

By letter dated January 11, 1999 the Carrier informed the Claimant that he had failed to produce the requisite documentation, and advised the Claimant that: "You are hereby required to return to service within five (5) calendar days after receipt of this notice, or forfeit all seniority rights."

The Claimant again personally responded to the Carrier stating that he was "unable to work at present and return to work date is indefinite." In that correspondence, the Claimant included a second "Premier Care Patient Status Report" dated January 18, 1999. The only notation on the report indicated that the Claimant was "unable to work at present and return to work date is indefinite."

The General Chairman also sent the Carrier correspondence, maintaining that, in accordance with Rule 33, Section (f), it would be "necessary" for the Carrier's Medical Director and the Claimant's physician to resolve the dispute surrounding the Claimant's medical fitness.

In final correspondence, the Carrier informed the General Chairman that the Claimant had failed to forward the requested medical documentation, and therefore, had forfeited his seniority.

In pertinent part, Rule 33 of the Agreement - Leave of Absence - provides that:

"(f) MEDICAL LEAVE. Requests for leave of absence account sickness or injury which are of fifteen (15) calendar days or less duration need not be in writing, but such requests must be advanced by the employee to the Carrier in a timely manner, specifying the nature of the illness or injury and the number of days required.

Requests for medical leave of absence account sickness or injury in excess of fifteen (15) calendar days must be made in writing and properly documented and supported by a statement from the employee's physician, which includes the specific reason therefor and the expected duration. Extensions thereof must also be supported by a similar statement from the employee's physician.

In the event a dispute arises as to whether a request for a medical leave of absence is properly documented, such dispute shall be resolved by the Carrier's Medical Director and the employee's physician; however, the seniority of the employee involved shall not be terminated as a result of such issue during the pendency of such dispute. If a leave request is denied, employee will be so advised and required to return to service within five (5) calendar days after receipt of such notice or forfeit all seniority rights."

The Organization asserts that the Claimant submitted all of the requested documentation and that pursuant to Rule 33(f) the Carrier's Medical Director and the Claimant's personal physician should be called upon to settle the "dispute" regarding what constitutes "proper" documentation. For its part, the Carrier asserts that the Claimant failed to produce any documentation since November 1, 1998, and that the Carrier's Medical Director and the Claimant's personal physician could not settle the

documentation "dispute" because the Claimant did not send any documentation. In these circumstances, we must concur with the Carrier.

In the Carrier's original correspondence of September 4, 1998, the Claimant was informed that his physician must provide the Carrier with the following information:

1. Your current medical condition, including diagnosis and prognosis.
2. Expected date you may resume work duties.
3. Expected work restrictions, if any, recommended by your treating doctor(s) for return to duty, and expiration date of suggested restrictions.
4. Medications
5. Current level of function.
6. Return to work plan.

On one occasion, on a September 23, 1998 "Union Pacific Railroad Medical Report," the Claimant's personal physician provided the Carrier with the requisite information quoted supra. Since that time, the only correspondence the Carrier received regarding the Claimant's condition were a series of self reports in which the Claimant alleged that he was "unable to work and return date is indefinite." These self serving statements hardly constitute "proper documentation" as contemplated by Rule 33 of the Agreement. Simply stated, the Claimant failed to return-to-work and did not provide sufficient or proper paperwork to support his request for a medical leave of absence.

Premised upon all of the foregoing, this 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 Third Division

Dated at Chicago, Illinois, this 19th day of March, 2002.