

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37344
Docket No. MW-36931
05-3-01-3-480

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin when award was rendered.

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employees
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The dismissal (seniority termination) of Mr. G. L. Bailey in connection with alleged failure to contact Employee Assistance during his medical leave of absence was without just and sufficient cause, based on unproven charges and in violation of the Agreement (Carrier's File 1243253 SPW).**
- (2) As a consequence of the violation referred to in Part (1) above, Mr. G. L. Bailey shall now '... be paid for all hours lost, including overtime, at the appropriate rate of pay from August 20, 1999 and continuing until such time as Claimant is reinstated and returned to his respective assigned position.'"**

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.

This claim challenges the Carrier's termination of the Claimant's seniority for abandonment of his employment relationship. Although the claim alleges violation of several provisions of the Agreement, careful review of the cited terms does not reveal any explicit prohibitions on the Carrier's right to terminate an employee who abandons his job. Moreover, prior Awards of the Board have recognized that such administrative action does not constitute disciplinary action. As a result, there is no requirement to invoke the discipline process and conduct a Hearing before termination of seniority under such circumstances. See, for example, Third Division Awards 32138 and cases cited therein as well as 31243. The determinative issue in this dispute, therefore, is whether substantial evidence in the record shows that the Claimant did abandon his job.

The Organization maintains that the Claimant kept in proper contact with the Carrier, via its EAP counselor, during his medical leave of absence and did not abandon his job. The following summary describes the operative facts.

The Claimant entered the Carrier's service on March 17, 1997. He was a Gulf War veteran who shortly thereafter displayed symptoms of post traumatic stress disorder and chemical dependency. On June 5, 1998, the Claimant was directed to contact its EAP manager for a fitness for duty evaluation. The Claimant's problems were diagnosed and he commenced a lengthy medical leave of absence thereafter. It is undisputed he was directed to comply with the instructions of the treatment providers and was warned of consequences if he did not.

After exhausting his medical benefits, the Claimant was referred by the Veterans Administration to a treatment provider named Progress House. Although the Carrier asserted that the Claimant failed to provide information about his status and progress from November 1998 through August of 1999, this is not quite correct. The record shows that the Progress House counselor regularly sent information to the Carrier's EAP manager during December through the following early

February. This consisted of five fax reports. However, they stopped after February 5, 1999. The record contains no further updates for the next several months.

In late July, the Carrier became aware that the Claimant was being treated at George Town Family Medical Center. Because this was not part of the Claimant's previously approved treatment program, the Carrier sent a certified letter to the Claimant's last known address requesting updated information about his status. It came back unclaimed. On August 3, 1999, the Carrier received information that the Claimant had left the Progress House program on February 26, 1999. The discharge summary in evidence shows that the Claimant became non-compliant and failed to successfully complete the program. Although he appeared to be making good progress initially, the summary showed that upon returning from a weekend pass, a drug test showed positive results for cocaine. The associated documents also questioned the Claimant's honesty. The Claimant was unavailable for a discharge interview.

Because of these circumstances, on August 7, 1999, the Carrier sent another certified letter to the Claimant's last known address directing him to make contact with the EAP Hotline within 24 hours of receipt. This letter also came back unclaimed. After having no success contacting the Claimant by other means, the Carrier removed his seniority and showed him as a resigned employee on September 7, 1999. The matter remained in this posture for several months thereafter.

In response to one or more inquiries about the Claimant's status by the General Chairman, the Carrier sent a March 28, 2000 letter to the General Chairman to confirm the action it had taken and to explain its reasons for doing so. To this date, the record does not show any attempts by the Claimant to contact the Carrier or the EAP.

The instant claim was filed on July 21, 2000. Oddly enough, Attachment 10 to the claim actually supports the Carrier's action. The attachment purports to be a medical release of the Claimant to full duty with no restrictions dated August 20, 1999 authored by a doctor at George Town Family Medical Center. It is not directed to the Carrier but, rather, to whom it may concern. On its face, the attachment shows that the Claimant had no basis for believing he was still on

medical leave of absence after August 20, 1999. Per Rule 33 of the Agreement, he was required to report for work or be considered absent without leave. Yet the Claimant did not so report, nor did he make any other type of contact with the Carrier thereafter.

Given the foregoing considerations, we find that the Carrier had a proper basis for concluding that the Claimant had abandoned his employment. Accordingly, we do not find the Carrier violated the Agreement when it removed the Claimant's seniority in the manner it did for the reasons it did.

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 January 2005.