

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 38075
Docket No. SG-38946
07-3-05-3-421

The Third Division consisted of the regular members and in addition Referee Danielle L. Hargrove when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Northeast Illinois Regional Commuter Rail Corp. (Metra))

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Northeast Illinois Regional Commuter Rail Corp. (Metra):

Claim on behalf of O. K. Coney, for the removal of discipline issued as a result of an investigation held on June 16, 2004, and that the Claimant to be made whole, account Carrier violated the current Signalmen's Agreement, particularly Rule 53, when it issued the Claimant a letter of reprimand without meeting its burden of proving the charges against him. Carrier also failed to provide the Claimant a fair and impartial investigation and failed to list the exact charges as required by the Agreement. Carrier's File No. 11-13-456. General Chairman's File No. 53 D 04. BRS File Case No. 13257-NIRC.”

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.

The Claimant was assigned to the position of Signalman headquartered at the Tinley Park, Illinois, Wire Shop when the occurrence resulting in this discipline took place. On or about September 1, 2004, the Carrier assessed the Claimant a formal letter of reprimand for failing to properly protect his position when he did not report for duty during the period of May 18 through June 13, 2004, in violation of Metra Employee Conduct Rule Q, Paragraph 1. The Organization protests the Carrier's imposition of discipline based on the contentions (1) the formal Investigation did not prove that the Claimant was required to report, (2) the discipline was excessive, (3) the Hearing violated Rule 53 because it was unfair and not impartial, and (4) the charges were not specifically identified because he was charged with failure to report, but disciplined for failing to call in.

The uncontroverted chronology of this case is as follows:

1. The Claimant called off for the entire month of May 2004 due to an off-duty injury. At that time, he had no available leave time, i.e., no vacation, personal or sick time that he could legitimately take. The Claimant had been calling off by calling his Foreman instead of his Supervisor as required.
2. On May 17, 2004 the Claimant contacted his Supervisor for the first time and informed him that he needed to remain off work because his doctor had not released him to return. Although the testimony is contradicting as to who had the burden of getting the medical leave information initiated, the uncontroverted evidence is that his Supervisor instructed the Claimant to call in daily beginning May 18, 2004. The Claimant did not do so.
3. Although the Supervisor understood that it was unlikely that the Claimant would physically report to work, he did require the Claimant to take the necessary steps to protect his position as best he could. In this

case, that required the Claimant to call in daily in accordance with Rule Q as instructed if he could not report and did not have an approved medical leave of absence or other protected medical leave in place.

4. On May 17, 2004, the Claimant was instructed to call his Supervisor to complete the process of obtaining an authorized medical leave. He did not do so.
5. The Claimant did not submit any request for a medical leave of absence until on or about June 1, 2004, i.e., some two weeks after his Supervisor instructed him to obtain such leave and he had absented himself from work with no further explanation.
6. The Claimant never accounted for his absences from May 18 – 20, 2004, with any evidence that he was under a doctor's care at that time. Therefore, the Claimant's Supervisor did not "know" the nature of the Claimant's absences. He could not assume or know the absences were FMLA absences or any other legitimate absence without proper documentation.
7. The Claimant was not held to a higher standard or "to a requirement not required of others." He had no approval for an extended absence. Therefore, it was appropriate for his Supervisor to expect to hear from him on a daily basis as instructed until such authorization was given.
8. The Hearing record does not demonstrate any evidence that the Claimant's Hearing was unfair or biased.

We find the Organization's focus that the charge was for "failing to report for duty" as opposed to "failing to call in" misplaced because it is a distinction without a difference under these facts. The "failure to report" is inexplicably intertwined with the issue of a valid medical leave. The Claimant accepted employment with the Carrier. Surely, he knew or should have known that he is required to report to work. When he does not or cannot report for work, he is obligated to follow the protocol and Rules required of him by his Supervisor and the Carrier. The Carrier investigated and charged the Claimant with failure to come to

work. With no evidence of an authorized medical absence, the Claimant's violation at its most basic sense was for failure to report. The Claimant admits he was told to obtain a leave of absence; yet, he presented no evidence demonstrating that he attempted to do so before June 1, 2004.

We also find the Organization's reliance on the Claimant's doctor's purported failures as an excuse or explanation for the Claimant's negligence in not protecting his position unpersuasive. The doctor's purported failure to return any medical leave papers in June for absences in May is immaterial. Likewise, the evidence does not support the Claimant's argument that his absences were protected FMLA absences. At the very most, such documentation could have established a basis for FMLA leave. However, because the Claimant did not or could not receive such documentation, it is not clear whether he ever was under a physician's care, much less at the time in question in May. In fact, there was no evidence provided on the property of the Claimant seeking to obtain such documentation from his doctor in May 2004 at all. His failure or inability to provide the requested documentation was to his detriment. For this reason, the Carrier's discipline was not excessive and will not be overturned.

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 21st day of February 2007.