

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40249
Docket No. MW-38486
10-3-NRAB-00003-040458
04-3-458**

The Third Division consisted of the regular members and in addition Referee Danielle L. Hargrove 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. M. P. Hague on July 31, 2003, in connection with charges of allegedly not providing medical information and absence without authority, was without just and sufficient cause, based on unproven charges and in violation of the Agreement (Carrier’s File 1375897).**
- (2) As a consequence of the violation referred to in Part (1) above, Mr. M. P. Hague shall now be ‘. . . reinstated to the service of the Carrier to his former position with seniority and all other rights restored unimpaired and that the letter of dismissal be expunged from his personal record. In addition, Claimant Hague shall also be compensated for net wage loss, both straight time and overtime, and benefit loss suffered by him since Claimant’s wrongful dismissal.’”**

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 entered the service of the Union Pacific Railroad Company (former Southern Pacific Transportation Company – Western Lines) on January 24, 1997. He established, held and maintained seniority rights within the Track Sub-department, Sacramento Division, Western Seniority District, coming under the Southern Pacific Transportation Company (Western Lines) Agreement. The Claimant also purportedly maintained seniority within the various Groups of the Agreement between the Union Pacific Railroad and the Brotherhood of Maintenance of Way Employees pursuant to the January 1, 1998 Implementing Agreement governing System Gang Operations.

On August 24, 2002, while regularly assigned as a Track Laborer, the Claimant injured his lower back. After reporting the injury to the appropriate Supervisor, the Carrier placed the Claimant on a medical leave of absence. The Carrier subsequently approved an extension until May 15, 2003. During the leave of absence, the Claimant's physician reported to the Carrier on April 9, 2003 that the Claimant was “. . . permanently precluded from engaging in his usual occupation.” Additionally, on April 14, 2003 after further examination, a different physician advised a Carrier representative of the Claimant's “permanent occupational disability” and suggested the Claimant be considered for reassignment. On June 11, 2003 the Director of Engineering Quality Management requested that the Claimant provide: 1) his current medical condition, diagnosis and prognosis 2) expected date he could resume work duties 3) work restrictions and expected duration thereof 4) prescribed medications 5) level of function, and 6) return-to-work plan to her by no later than July 2, 2003. The Claimant timely mailed the above-referenced April doctors' reports; however, he did not obtain new or more current information as requested by the July 2, 2003 deadline. On July 31,

2003, the Carrier advised the Claimant that he had terminated his seniority rights under the self-executing terms of Rule 25(g) of the parties' Agreement, because he had not returned to work or properly extended his medical leave of absence.

Rule 25(g) states, in pertinent part, that requests for a medical leave of absence in excess of 15 calendar days must be made in writing and properly documented and supported by a statement from the employee's physician. It also states that employees failing to return to work before the expiration of their leave of absence will lose their seniority rights unless an extension has been obtained.

The Organization contends that the Carrier improperly terminated the Claimant from service because he did not intend to abandon his job and he had a valid medical reason to be absent of which the Carrier was aware. It further contends that the Carrier improperly relied on Rule 25(b) to terminate the Claimant's seniority because the Claimant did not voluntarily fail to report to his assigned position. The Carrier, on the other hand, contends that the Claimant neither requested an extension of his medical leave as required by Rule 25(b) nor did he furnish current medical documentation as required by Rule 25(g) despite being asked directly for such documentation.¹

Viewing the record in the light most favorable to the Claimant and assuming that he submitted his doctor's previous assessments in response to the Carrier's request, we cannot find that the Claimant's prior submissions are sufficiently responsive.² Therefore, we concur with the Carrier and find no violation of the parties' negotiated Agreement. Rule 25(g) is self-executing as established by

¹ We note that the Claimant's physician re-examined the Claimant on July 15, 2003 and provided a Supplemental Physician's Report confirming that the Claimant was precluded from engaging in his usual occupation and that his condition was permanent and stationary. However, the report did not provide all of the requested information.

² The Board is mindful that the Claimant apparently resubmitted prior doctor reports which reflected that the Claimant was permanently precluded from engaging in his usual occupation and that the Claimant was permanently disabled for his chosen occupation. We further realize that the Claimant may have assumed that such prior reports sufficed; however, his failure to confirm the sufficiency of the prior reports in response to the Carrier's specific requests was to his detriment. The only evidence available on the record reveals that the Claimant had seen his physician as required on July 15, 2003, well after the expiration of his extended medical leave of absence.

significant arbitral precedent. Due to the Claimant's failure to comply with the specific request to provide then-current information concerning his medical condition and status, forfeiture of seniority is automatic and is not disciplinary in nature. Accordingly, the Board will not disturb the Carrier's decision to affect dismissal.

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 15th day of January 2010.