

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 38054
Docket No. CL-39261
07-3-05-3-637

The Third Division consisted of the regular members and in addition Referee Martin H. Malin when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(National Railroad Passenger Corporation (Amtrak))

STATEMENT OF CLAIM:

**"Claim of the System Committee of the Organization (GL-13107)
that:**

1. Carrier violated Rules 22, Article XW(h), of the September 1991 Mediation Agreement, Article III, Section 10 and other related rules of the Clerical Agreement, when on July 9, 2003, Claimant Glynis Matthews requested to return to service from a TCU Family Medical Leave of Absence (FMLA) for the birth of her child.
2. The Carrier shall now be required to reinstate Claimant to service with all of her seniority rights unimpaired.
3. The Carrier shall now be required to compensate Claimant forty (40) hours per-week at the Ticket Clerk pro rata rate beginning July 9, 2003 and continuing until this dispute is settled or this claim is honored."

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 working as a Ticket Agent when she was expecting a baby and applied for leave under the Family Medical Leave Act (FMLA). By letter dated December 16, 2002, the Carrier's Director, Human Resources advised the Claimant that she was not eligible for FMLA leave, because she had not worked at least 1250 hours. The letter continued:

"However, you have been certified for Family Leave under the TCU Agreement to care for your newborn child. This certification entitles you to use Family Leave for a period of 24 months (2 years), beginning March 11, 2002 and ending March 11, 2004. Also, you may not update your Family Leave until such time as your TCU Family Leave allotted time has expired.

As per the Transportation Communication Agreement, this time can only be used in the same manner as Leave of Absence Time. Leave of Absence time constitutes full day absences in increments of an entire assignment.

You must call to protect your assignment before the start of your assignment. You must specify that you are calling off on Family Leave. This will allow you up to 480 hours of leave time to be used during the aforementioned time period."

The Claimant began her Family Leave in mid December 2002. She sought to return to service on June 30, 2003. She was advised that her Family Leave expired on March 8, 2003, and that she had failed to return at that time.

Rule 21(j) gave the Claimant a right to leave "for a maximum of twelve weeks in any twenty-four (24) month period, commencing with the birth or adoption of the child. . . ." Clearly, the Claimant was not entitled to leave extending through June 2003. The Organization, nevertheless, contends that the Director, Human Resources' letter led the Claimant to believe that her leave could run for 24 months and, consequently, the Carrier is estopped from denying the Claimant's return to

service as long as she indicated her desire to return within the 24-month period. Yet the Director, Human Resources' letter plainly advised the Claimant in the third paragraph quoted above that the TCU Agreement "will allow you up to 480 hours of leave time to be used during the aforementioned time period."

Although the Director, Human Resources' letter accurately portrayed the conditions of the leave, the letter was not a model of clarity. A reasonable person reading only the first paragraph quoted above could easily believe that she was granted up to 24 months' leave. The record reflects that the Claimant did so believe and that she was in good faith confused and mistaken. The record does not establish that the Claimant intended to abandon her job.

Considering all circumstances of this case, we conclude that the proper resolution of this claim is to reinstate the Claimant to service with seniority unimpaired, but without compensation for time out of service.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 25th day of January 2007.