Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 40423
Docket No. SG-40416
10-3-NRAB-00003-080188

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

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

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad:

Claim on behalf of R. H Carr, for reinstatement to his former position with all seniority rights and benefits restored unimpaired and with compensation for all time lost, including overtime, beginning on November 1, 2006 and continuing until this dispute is resolved, account Carrier violated the current Signalmen's Agreement, particularly Rules 62 and 80, when it severed the Claimant's seniority rights and employment relationship and failed to accept the medical documentation provided by the Claimant and his physician outlining his continued disability. Carrier's File No. 1463987. General Chairman's File No. UPGCW-62-1278. BRS File Case No. 13932-UP."

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 record indicates that Claimant R. H. Carr commenced a medical leave of absence from his Signalman position on August 18, 2006, ending September 1, 2006. In that connection, the Director of Track Maintenance wrote to him on the same day explaining that, ". . . [i]f you have not been released to return to work, during or at the expiration of this leave, you must supply [the] Health and Medical Department, medical documents that will support your continued absence prior to the expiration of your leave of absence, as per the terms of your agreement."

It is undisputed that the Claimant had no communication with the Carrier thereafter until the afternoon of September 5 when he phoned Signal Manager Farrow to advise that he had left a Medical Progress report with his physician on August 29, 2006 with a request that it be completed and sent to Omaha. The physician, however, had been on vacation until September and the Claimant had not followed up with him to make certain the report had been completed and forwarded. On September 13, the Carrier then sent Farrow a follow-up indicating that it had not received the information required for extension of the Claimant's leave. Although technically afoul of the Agreement Rule at this point, the Claimant was permitted to extend his leave to October 1. In confirming that extension on September 18, Farrow expressly advised the Claimant that he would be required to provide medical documentation substantiating the need for the continued leave not later than October 1.

Once again, however, neither Farrow nor the Health and Medical Department heard from the Claimant prior to the newly set date for expiration of his medical leave. Accordingly, on October 14, Farrow wrote to the Claimant, in relevant part, as follows:

> "You first obtained a Medical Leave of Absence on August 18, 2006 that was approved until September 1, 2006. You did not report to work on the expiration of this leave and did not provide information to the Health and Medical Department prior to the expiration of this leave of absence [until] five working days after you should have reported for work . . . [d]uring this phone conversation . . . you indicated that you would possibly return to work around September 26, 2006. To give you the benefit of any doubts, I agreed to let you proceed with an extension of your leave . . . that letter stated that

> you would be on approved medical leave of absence until October 1, 2006. The letter also stated that 'If you have not been released to return to work, during or at the expiration of this leave, you must supply [the] Health and Medical Department medical documents that will support your continued absence prior the expiration of your leave. . . .' It is now October 14, 2006. I have not received any information from you or the Health and Medical Department in Omaha. . . . 'As of October 14, 2006 you have been absent from you assignment for nine consecutive work days without proper authority. . . .'"

The Carrier's termination action was duly challenged by the Organization, appealed in the usual fashion in claim handling on the property, conferenced, and ultimately advanced to the Board for final determination.

Rule 62 (A) of the parties' Agreement provides, in pertinent part:

> "Employees will be granted leaves of absence in writing when they can be spared without interference to the service, but not to exceed six months within any twelve month period, except in cases of sickness, organization work, special service with railroad bureaus or commissions, holding public office or work in a Signal Engineer's office."

With respect to the Organization's contention that employees requiring medical leave are exempt from written leave requirements under Rule 62 (A) applying normal canons of contract construction, the Board finds more persuasive the Carrier's reading of the Rule as exempting such employees not from the "in writing" terms, but from the six month requirement referenced therein.

The record leaves little room for avoiding the conclusion that in managing his absence, the Claimant failed to follow not only the clear terms of the Agreement, but also the equally clear instructions that he had twice received with regard to the need to provide the Carrier with healthcare information prior to the expiration of his leave of absence. The first miscue might reasonably be explained by a patient-physician disconnect, and the Carrier appears to have taken that approach. In allowing his medical leave of absence to expire a second time on October 1 without ever contacting the Carrier, the Claimant appears to have seriously ignored his

basic employment obligations. He offers no compelling explanations for his disregard in failing to obtain proper authorization for his continued absence.

The Claimant was terminated in accordance with the self-executing terms of Rule 62 D, which states:

> "Employees absenting themselves from their assignments for five consecutive working days without proper authority will be considered as voluntarily forfeiting their seniority rights and employment relationship."

In view of the foregoing facts, and in the absence of justifiable reasons shown for failure to report to work or otherwise justify his absence on medical grounds, the Board is compelled to deny the claim.

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 14th day of May 2010.