

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41566
Docket No. MW-41570
13-3-NRAB-00003-110186**

The Third Division consisted of the regular members and in addition Referee Brian Clauss when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier improperly removed all of Mr. T. Kowalske’s seniority and terminated his employment relationship by letter dated December 17, 2009. (System File D-1025U-201/1532908)**
- (2) As a consequence of the violation referred to in Part (1) above, the Carrier shall now reinstate Claimant T. Kowalske’s ‘. . . employment status with vacation and seniority rights unimpaired. Claimant stands ready to comply with all requests of the Medical Department in order to be released for full duty. We further request that Claimant be compensated for any lost wages to which he otherwise would have earned upon his return to work after acquiring his doctor’s release due to the removal of his seniority on December 17, 2009. This claim is considered as continuing until the violation ceases and Claimant’s employment relationship is reinstated.’”**

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 the Carrier placed the Claimant on a medical leave of absence from January 13 through February 14, 2009. Although the Claimant was provided the forms by which to extend his medical leave, he failed to complete the forms and provide the medical information necessary to update his continued absence from work. Neither did the Claimant return to work after February 14. As a result, it is the Carrier's position that the Claimant forfeited his seniority in accordance with the self-executing provisions of Rule 25(b) of the Agreement.

It appears to the Board that the Claimant's failure to comply with the necessary steps to extend his medical leave may have stemmed from his decision to change his residence in accordance with his Doctor's advice. Based on the unique circumstances of this case, the Board finds it reasonable to give the Claimant one final opportunity to comply with the Carrier's medical Rules and procedures for the purpose of returning to work.

Therefore, the Claimant will be reinstated to active employment with seniority unimpaired, but without pay for time lost. The Claimant's reinstatement is contingent upon his successful completion of the Carrier's applicable return-to-duty examinations and provision of requested medical information to the Carrier. The Claimant shall report for an initial return-to-duty examination and provide the medical information requested by the Union Pacific Health and Medical Department to the person designated by the Carrier within 30 days of being notified to do so by the Carrier.

AWARD

Claim sustained in accordance with the Findings.

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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 18th day of March 2013.