

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 42281
Docket No. MW-42614
16-3-NRAB-00003-140308

The Third Division consisted of the regular members and in addition Referee Louis V. Imundo, Jr. when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
(BNSF Railway Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed and refused to extend the medical leave of Mr. P. Lulow and instead removed him from service by letter dated September 18, 2012 (System File C-13-A040-3/10-13-0136 BNR).
- (2) As a consequence of the above-stated violation, we request ‘ . . . the Claimant’s seniority be restored, he be returned to service immediately with seniority unimpaired, and that he be paid all lost wages, straight time, overtime, paid and non-paid allowances, expenses, per diems, vacation, health and welfare insurance, vision insurance, dental insurance, supplemental insurance, and all other benefits to which entitled, but lost as a result of the Carrier’s decision to remove his seniority.”

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 establishes that before his last medical leave expired, the Claimant was notified in writing that he must obtain an extension of his leave or report for duty on or before the expiration of the leave. The Claimant was also told that if he failed to report for duty at the expiration of his leave he would be subject to the consequences outlined in the Collective Bargaining Agreement.

The Claimant failed to comply with either of those instructions. Although the Carrier could have applied Rule 15 and terminated his seniority, he was sent another letter giving him ten days from the date of that letter to provide the Carrier with a physician's statement. The Claimant was also given notice that if he failed to comply with the instruction his leave might be terminated and he would be subject to disciplinary action. Because the Claimant again failed to comply with the instruction, he forfeited his seniority and his employment was terminated. The Board concludes that the Carrier's actions were appropriate under the circumstances. Accordingly, the claim lacks merit and must be denied.

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 April 2016.