

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 42611  
Docket No. MW-42878  
17-3-NRAB-00003-150062**

**The Third Division consisted of the regular members and in addition Referee I. B. Helburn when award was rendered.**

**(Brotherhood of Maintenance of Way Employees Division -  
(IBT Rail Conference**

**PARTIES TO DISPUTE: (**

**(BNSF Railway Company (Former Burlington Northern  
(Railway Company)**

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

- (1) The Carrier violated the Agreement when it improperly terminated the seniority of Mr. P. St. George effective April 12, 2013 (System File B-M-2700-E/11-13-0344 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant P. St. George shall now have his seniority restored and ‘... be placed on an indefinite medical leave of absence and that Claimant be allowed to return to Carrier service when he is medically able to do so.”**

**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 Carrier insists that the Claimant automatically forfeited his seniority rights on April 11, 2013 and the Organization did not file a claim by July 10, 2013 as required, thus the claim is barred from consideration. The Claimant neither reported for duty nor requested an extension, as he had done previously. If the claim is sustained, the Claimant is due only lost seniority and wages offset by outside earnings.

The Organization asserts that the claim was not untimely because it acted in good faith, believing that the matter would be resolved. The automatic termination of the Claimant's seniority was contrary to the intent of Rule 15 as the evidence shows that the Claimant made a good-faith effort to timely supply medical documentation and was treated differently than the Carrier has treated others with serious medical conditions.

Because he was on a medical leave of absence, the Claimant was governed by the following, self-enforcing portion of MOWOR 15.E Leave of Absence: "An employee failing to report for duty on or before the expiration of their leave of absence will forfeit all seniority rights unless an extension is obtained." Having been granted a medical leave of absence beginning February 5, 2013, the Carrier wrote the Claimant on March 5, 2013 that he had not provided supporting documentation to justify a continued leave. The Carrier's letter included the following: "As a one-time courtesy, BNSF is willing to consider leniency provided that you contact my office within 10 calendar days from the date of this letter in order to either 1) request additional leave, or 2) return to work." The Claimant responded with the necessary documentation and received a leave extension until April 11, 2013. However, on or before April 11, 2013 Claimant neither reported for service nor applied for a leave extension.

The Board accepts the Organization's contention, supported by record evidence, that the Claimant suffered from serious medical issues, including heart problems, and that he was unable to work at the time the medical leave expired on April 11, 2013. The Board further acknowledges that this is not a case of job abandonment and that there are Third Division awards, some on-property, that have made exceptions to the self-enforcing provisions of MOWOR 9 and 15. However, the Claimant's case may be distinguished from those relied on by the Organization in one very critical aspect.

This was not the first time that the Claimant had been less than diligent in protecting his seniority. As noted above, a month earlier the Carrier as a one-time courtesy extended the time for the Claimant to provide the documentation necessary for an extension of his leave request. Thus, the Claimant was given a second chance and was put on explicit notice to be more diligent in the future. The Carrier went the extra mile, so to speak. The Carrier's knowledge of the Claimant's serious medical issues did not relieve the Claimant of the obligation to comply with Rule 15 and thus protect his seniority. The Board cannot justify giving the Claimant what in essence would be a third chance.

**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 27th day of June 2017.