

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42701
Docket No. MW-43215
17-3-NRAB-00003-150444**

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 Ms. A. Marcum by letter dated March 4, 2014 (System File S-P-1861-C/11-14-0204 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant A. Marcum shall now have her seniority restored and “***the Carrier immediately allow Claimant to report to her desired position. We further request that Claimant be made whole for any and all losses beginning March 1, 2014, and continuing. Those losses include the loss of wages, eight hours per assigned work day, payment for any and all overtime lost beginning March 1, and accreditation for any and all lost benefits, including accreditation for vacation qualification, and qualification for health, dental, vision, life insurance benefits.”**

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 asserts that the Claimant's lack of compliance with Rule 15, which is self-executing, led to automatic termination of her seniority when she failed to obtain an additional medical leave. The Claimant called Human Resources to inquire about placement options but not about a leave extension. She failed to exercise due diligence and never received a leave extension. Moreover, the Carrier is not contractually obligated to grant an indefinite leave and has not done so previously. If the claim is sustained, the Claimant is due only lost seniority and wages, with wages offset by outside earnings.

The Organization insists that termination of the Claimant's seniority violated the Agreement because she had verbally been given an extension and had complied with Rule 15. This was not a case of job abandonment or of ignored responsibilities. The Claimant attempted to obtain the necessary medical documentation to extend her leave but was unable to reach her provider until the following Monday, when the necessary forms were completed and returned. However, it was obvious that the Claimant intended to return to work and that she had complied with Rule 15. There is precedent for making exceptions to self-executing provisions based on "relevant mitigating facts and circumstances." Rule 15 does not require that an extension be granted by a specific individual, contrary to the initial request for leave. The transcript of the Claimant's telephone conversation with Matt Faber in Manpower Planning is both incomplete and inaccurate.

The Claimant's initial leave for reasons of childbirth was granted in July 2013 and expired on September 20, 2013. Written notice of that leave was signed by Lisa Washington, who also signed every subsequent extension. The Claimant received an extension from September 20 through October 19, 2013. When she did not request a timely further extension, she was sent a letter informing her of the forfeiture of seniority in accordance with the self-executing provisions of Rule 15. The letter included the following: "As a one-time courtesy, BNSF is willing to

consider leniency provided that within 10 calendar days of the date of this letter, you either 1) request additional leave, or 2) return to work.” The Claimant obtained an extension through November and additional extensions through January 2, 2014, February 1, 2014 and March 1, 2014.

The Claimant waited until Friday, February 28, 2014 to call and inquire about returning to work. The Organization believes that the February 28 telephone conversation with Matt Faber resulted in his verbal grant of an extension. The Carrier says otherwise. The Board finds the following elements of the situation to be critical. Each previous leave extension had been documented by letter signed by Lisa Washington, Supervisor, Manpower Planning. These letters establish that the Claimant was or should have been familiar with Rule 15 and the procedure for applying for a leave extension and thus preserving seniority. When previously the Claimant did not follow appropriate procedures, she received a one-time grant of leniency that allowed her to preserve her seniority. This should have put the Claimant on notice that waiting until the last day of her leave, particularly when that day was a Friday, to inquire about an extension or, alternatively, a return to work, was foolish and tempted fate in the form of termination of her seniority. The Carrier’s assertion that Matt Faber was not authorized to grant a leave extension and his own assertion that he did not grant the Claimant an extension are accepted as accurate. The Organization’s claim and the Claimant’s assertion that she understood Mr. Faber to have granted the extension may have been consistent with the very human inclination to hear what we want and need to hear, but it is not consistent with the reality of the situation, which included the absence of the usual letter from Lisa Washington documenting the additional extension.

The Board finds that the transcript of the telephone conversation between the Claimant and Mr. Faber was the best that was possible and that any incompleteness or inaccuracy was the product of sound quality and certainly not Carrier bad faith. Finally, there is strong precedent in the on-property cases cited by the Carrier for allowing the self-executing provisions of Rule 15 to take effect and no on-property precedent for deviating from those provisions, although there are examples from other rail companies. The Carrier gave the Claimant a second chance. For all of the reasons set forth above, the Board finds no compelling reasons to provide 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 12th day of July 2017.