

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43153  
Docket No. SG-43414  
18-3-NRAB-00003-160068**

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

**(Brotherhood of Railroad Signalmen  
PARTIES TO DISPUTE: (  
(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 P. Haro, for return to service with all seniority and benefits unimpaired, account Carrier violated the current Signalmen’s Agreement, particularly Rule 49, when it extinguished his seniority on July 25, 2014. Carrier’s File No. 1611815. General Chairman’s File No. UPGCW-49(a)-0195. BRS File Case No. 15266-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 Organization filed the instant claim on the Claimant’s behalf, alleging that the Carrier violated the parties’ Agreement when it improperly asserted on July 25, 2014, that the Claimant voluntarily forfeited his seniority due to an alleged**

failure to provide medical information to the Carrier in connection with his medical leave of absence. The Carrier denied the claim.

The Organization contends that the instant claim should be sustained in its entirety because the evidentiary record does not support the Carrier's position, because the Claimant's physician failed to send the appropriate documentation to the Carrier due to a miscommunication, because the Claimant did not resign from the Carrier's service, because the Claimant did not receive any letters from the Carrier until after the Carrier found that he had forfeited his seniority, and because the Carrier failed to consider the mitigating circumstances in this matter.

The Carrier contends that the instant claim should be denied in its entirety because the termination of the Claimant's seniority under the self-executing forfeiture provision was reasonable and consistent with established policy and arbitral precedent, and because the Organization has failed to meet its burden of proof.

The parties being unable to resolve their dispute, this matter came before the Board.

The Board has reviewed the record in this case, and we find that the Organization has failed to meet its burden of proof that the Carrier violated the parties' Agreement when it terminated the Claimant's seniority on July 25, 2014. Therefore, the claim that the Agreement was violated must be denied.

The Carrier terminated the Claimant's seniority based upon its enforcement of Rule 49(A), which states the following:

**"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. Copy of leave of absence will be furnished to the Local Chairman. Unless satisfactory evidence of being unavoidably detained as provided, any employee who fails to report for duty at the expiration of leave of absence will be considered as voluntarily resigned from**

**service and such position will be declared vacant and bulletined unless an extension has been granted.”**

**Although the Claimant failed to return to work on a timely basis, there is also evidence that the doctor at issue failed to send the materials that were required to the Carrier on a timely basis. The record also reveals that although the Claimant was failing to bring in the necessary documentation, it was not his fault; and when he did receive notice, he acted.**

**Given the mitigating, unique circumstances in this case, the Board finds that the Carrier must reinstate this more than twenty-year employee to employment but without back pay. He receives no benefits for the past and only his seniority going forward. This ruling is based on the unique circumstances of the unusual facts in this case.**

**AWARD**

**Claim sustained in accordance with the Findings.**

**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 30th day of May 2018.**