

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43160
Docket No. SG-43586
18-3-NRAB-00003-160317**

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(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 A.D. Babcock, for reinstatement to service upon his medical release for duty with all seniority and benefits unimpaired, that he be made whole for any losses he has incurred, and the removal of any mention of this matter from his personal record, account Carrier violated the current Signalmen’s Agreement, particularly Rules 49, 55, 57, and 65, when it extinguished his seniority on December 17, 2014. Carrier’s File No. 1625523. General Chairman’s File No. N 57 1243. BRS File Case No. 15283-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 extinguished the Claimant's seniority on December 17, 2014, after the Claimant allegedly failed to report for duty without proper authority from October 8 until November 4, 2014. The Carrier denied the claim.

The Organization contends that the instant claim should be sustained in its entirety because the Claimant requested a leave of absence to receive treatment for post-traumatic stress disorder, because the Claimant qualified for FMLA leave, because Manager Stearns failed to return any of the Claimant's phone calls after advising the Claimant about FMLA, because the evidence does not support the Carrier's determination that the Claimant voluntarily had relinquished his seniority, and because the Carrier failed to consider the mitigating circumstances.

The Carrier contends that the instant claim should be denied in its entirety because the Organization's appeal was procedurally defective, because the Organization has failed to meet its burden of proof, because the self-executing language of Rule 49(d) is reasonable and consistent with both established policy and arbitral precedent, because the Organization's arguments are unpersuasive, and because the Claimant suffered no loss of wages.

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

The Board has reviewed the procedural argument raised by the Organization, and we find it to be without merit.

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 ended the Claimant's seniority on December 17, 2014, for failing to report for duty without proper authority from October 8 until November 4, 2014. Therefore, this claim must be denied.

Rule 49(D) states the following:

“Employees absenting themselves from their assignments for five (5) consecutive working days without proper authority will be considered as voluntarily forfeiting their seniority rights and employment relationship. Such employees may make request for a hearing relative to their forfeiture of seniority to show justifiable reason as to why proper authority was not obtained. Said request for hearing must be made within ten (10) calendar days from the date of removal from service.”

The record reveals that the Claimant in this case was absent without authority from October 8, 2014, to November 4, 2014. The Claimant was sent a notice on November 4, 2014, ending his employment relationship with the Carrier pursuant to Rule 49(D). The Claimant was given a hearing on December 2, 2014, pursuant to Rule 49(D), but he did not provide any documentation or give a justifiable reason to account for his failure to protect his work assignment.

Since the Claimant did not fully comply with Rule 49(D), which makes it clear that his seniority will be terminated if he is found to be in violation, the Board has no other choice other than to deny the claim.

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 30th day of May 2018.