

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 43166  
Docket No. SG-43659  
18-3-NRAB-00003-160386

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:** (  
(BNSF Railway Company

**STATEMENT OF CLAIM:**

“Claim on behalf of the General Committee of the Brotherhood that:

Claim on behalf of E.I. O’Dell, for reinstatement to his former position with all seniority and benefits unimpaired, compensation for all time lost, including overtime and skill pay, and any mention of this matter removed from his personal record, account Carrier violated the current Signalmen’s Agreement, particularly Rules 36 and 54, when, on November 17, 2014, it refused to permit the Claimant to return to service from a Medical Leave of Absence and then extinguished his seniority rights without providing him an Investigation. Carrier’s File No. 35-15-0021. General Chairman’s File No. 15-005-BNSF-33-K. BRS File Case No. 15318-BNSF.”

**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.

On November 17, 2014, the last day of his Medical Leave of Absence, the Claimant reported for duty at his headquarters. The Carrier refused to allow the Claimant to return to duty on that date, and the Claimant was escorted off the property. On November 20, 2014, the Carrier issued a letter to the Claimant that informed the Claimant that his seniority rights had been lost and that his employment record had been closed because he had failed to provide required medical documentation in accordance with Rule 36(D) of the Agreement. The Organization thereafter filed a claim on the Claimant's behalf, challenging the Carrier's decision to dismiss him and to do so without providing him an Investigation. The Carrier denied the claim.

The Carrier contends that the instant claim should be denied in its entirety because the Claimant was not disciplined or dismissed as the Organization asserts, because the Claimant terminated his own employment under Rule 36(D) when he failed to procure an extension of his leave, because such self-executing rules are common in the railroad industry, because the Claimant repeatedly was informed of the steps he had to follow to return to duty or obtain an extension of his leave, because there is no support for the Organization's arguments, because the Claimant failed to provide any information to the Medical Department until three days after his leave expired, and because there is no basis for overturning the termination of the Claimant's employment. The Organization contends that the instant claim should be sustained in its entirety because there is no dispute that the Claimant complied with the clear and unambiguous language of Rule 36(D) when he reported for duty on or before the expiration of his leave of absence, because the Claimant had provided his doctor with the proper forms prior to the end of his leave, because the physician's office was responsible for the delay in the submission of medical documentation to the Carrier, because the Carrier has no right to arbitrarily dismiss an employee under the guise of an alleged self-executing rule, because the Carrier failed to provide the Claimant with the required fair and impartial Investigation, because there is no merit to the Carrier's defenses, and because the Carrier's decision to dismiss the Carrier was arbitrary and unsupported by the Agreement.

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 although the Claimant failed to fully live up to his responsibilities regarding providing medical

documentation and returning from a medical leave of absence when required, there were enough mitigating factors in this file to find that the Claimant's termination by the Carrier was not fully in compliance with the rules. Consequently, we order that the Claimant be reinstated to employment, but without back pay. The Carrier still has a right to make sure that the Claimant is medically qualified to return to work because there has never been a proper Investigation into that matter; however, if the Claimant is found to be medically fit for duty, the Claimant shall be reinstated to service as soon as he passes all of the medical tests.

**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.