

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43203  
Docket No. MW-43096  
18-3-NRAB-00003-150318**

**The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.**

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

**PARTIES TO DISPUTE: (**

**(Union Pacific Railroad Company**

**STATEMENT OF CLAIM:**

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

- (1) The Carrier's decision to terminate Mr. J. Frakes by letter dated January 3, 2014 for allegedly failing to secure an approved medical leave of absence or return to service after the expiration of his last approved leave of absence was arbitrary, capricious, without just and sufficient cause and in violation of the Agreement (System File J-1425U-501/1602023 UPS).**
- (2) As a consequence of the violation referred to in Part (1) above, Mr. J. Frakes shall now "\*\*\*\*have his seniority and benefits restored and be given an opportunity to return to work via the bulletining and assignment process or the force restoration process."**

**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.

By letter dated January 3, 2014 the Claimant was advised that his employment relationship and seniority rights were terminated in accordance with Rule 25 because of his failure to return to service after the expiration of his last approved leave of absence. The record reflects that the Claimant was granted a medical leave of absence (MLOA) effective July 30, 2013 via the Carrier's Employee Assistance Program (EAP), and that such leave ended on October 17, 2013 when he failed to comply with treatment. The Carrier sent him two certified show cause letters, dated October 24 and December 12, 2013, advising him of the expiration of his MLOA and requiring him to submit to EAP additional information to assess his ability to return to work. The letters were sent to his address of record in Eagle Grove, IA, and were eventually returned to the Carrier when they remained unclaimed after 3 unsuccessful attempts at delivery. The January 3, 2014 termination letter was also sent to the Claimant's Eagle Grove address but was signed for as received by the Claimant's mother Judy.

This claim disputes the Carrier's decision to terminate the Claimant under Rule 25, on the basis that he never received the letters because the Carrier sent them to the wrong address, and seeks the opportunity for the Claimant to be returned to service with restoration of his seniority and benefits. With the claim, the Organization included a copy of an email from its Vice Chairman dated July 29, sent to an EAP Manager, requesting that the Claimant be placed on MLOA effective July 30, 2013, and indicating that he had spoken with the Claimant's mother who said that he would be staying with her. The email included her address in Sioux City, IA. There is no dispute that the Claimant never changed his address of record in the Carrier's system, although required to do so by Carrier Rules. The Carrier granted the Organization's request for a Rule 48(k) hearing, despite the fact that the Claimant was not terminated under that provision, which was held on February 3, 2014. By letter dated February 5, 2014, sent to the Sioux City address, the Carrier confirmed its termination decision. The record reveals that the Claimant's position as System CAT tamper operator on Gang 9055 was eliminated effective December 18, 2013.

The relevant portion of Rule 25, Leave of Absence, provides:

**“(b) .... Employees failing to return before the expiration of their leave of absence will lose their seniority rights unless an extension has been obtained.....**

**(d) An employee returning from leave of absence ... may return to former position or may exercise seniority rights over any junior employee who is holding a position that has been bulletined during the returning employee’s absence, except that if the employee’s former position has been abolished or is being held by a seniority employee through the exercise of displacement rights, the returning employee may exercise seniority rights over junior employees as provided in Rule 21.**

**(g) .... Requests for medical leave of absence on account of sickness or injury which are of fifteen (15) calendar days must be made in writing and properly documented and supported by a statement from the employee’s physician, which includes the specific reason therefore and the expected duration. Extension thereof must also be supported by a similar statement from the employee’s physician...”**

**The Organization asserts that the Claimant did not receive the show cause letters because they were sent to his old address, when the Carrier was notified of his mother’s address in the Organization’s email requesting the MLOA. It maintains that Rule 25 does not apply to the Claimant, nor can it serve as a basis for his termination, since his position was abolished on December 18, while his MLOA did not expire until December 20, 2013, technically putting the Claimant in furlough status at the time his leave expired, with no obligation to provide additional documentation. The Organization states that terminating the Claimant under such circumstances is excessively harsh and unwarranted.**

**The Carrier argues that the Claimant’s leave expired on October 17, 2013, it properly notified him of this fact in two different show cause letters sent to his address or record, and that the Claimant’s mother actually signed for his termination letter at his record address, revealing that he was still receiving mail there. It points out that the Claimant was responsible himself for inputting a change of address form and updating his records if he wanted to be contacted elsewhere, it**

is admitted that he failed to do so, and the Carrier cannot be held to have notice of something forwarded by email to an EAP official. The Carrier contends that the Claimant's MLOA ended on October 17, 2013, not on December 20 as the Organization asserts, so the abolishment of his position after December 18 did not change his status, or effect its right to rely upon the self-executing forfeiture provision of Rule 25 in this case, which has been held to be reasonable, citing PLB 6621, Award 37 and PLB 6302, Award 58. Finally, it notes that the Claimant was provided many opportunities to submit documentation supporting an extension of his leave, but failed to do so, thereby not protecting his assignment before its abolishment.

A careful review of the record convinces the Board that the Organization has failed to sustain its burden of proof in this case. There is no dispute that it was the Claimant's responsibility to update his personal record by inputting any change of address notification in the system, and that the Carrier's use of his address of record to send correspondence was appropriate. The fact that the Claimant may not have received the show cause letters is not the fault of the Carrier, who attempted to make the appropriate contact to afford the Claimant the opportunity to extend his MLOA and protect his assignment. The information sent by the Organization in an email to the EAP was insufficient to put the Carrier on notice that the Claimant wished to receive his mail at his mother's address, in the absence of any change of address notification by the Claimant. It appears from the record that the Claimant's mother was retrieving mail for him at his Eagle Grove address of record, since she signed for the termination letter sent there. The Organization has been unable to establish that the Claimant's situation did not fall within the parameters of the self-executing forfeiture provision in Rule 25 relied upon by the Carrier to terminate the Claimant's employment and seniority in this case, or that use of such provision was arbitrary.

**AWARD**

Claim denied.

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**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.**