

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43454
Docket No. MW-44391
19-3-NRAB-00003-170500**

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

**(Brotherhood of Maintenance of Way Employes Division –
IBT Rail Conference**

PARTIES TO DISPUTE: (
(Keolis Commuter Services, LLC

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier’s decision to terminate the seniority of Mr. J. Hernandez for his alleged violation of Rule 16 Absence From Work was without just and sufficient cause and in violation of the Agreement (Carrier’s File BMW 15/2016 KLS).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. Hernandez shall be reinstated to service with seniority and all other rights and benefits unimpaired and shall be compensated for all lost wages and 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.

By notice dated July 29, 2016, the Claimant was notified that he allegedly had resigned from the Carrier's service by being AWOL for more than ten days without notifying the Carrier during June and July 2016. By letter dated August 1, 2016, the Claimant requested a formal investigation, which was conducted on September 1, 2016. By letter dated September 8, 2016, the Claimant was informed that because he had not brought forward satisfactory evidence of a physical disability during the investigation, he rightfully was considered as having resigned from the Carrier's service. The Organization subsequently filed the instant claim on behalf of the Claimant, challenging the Carrier's decision to discipline him. The Carrier denied the claim.

The Organization contends that the instant claim should be sustained in its entirety because the Carrier violated the parties' Agreement when it terminated the Claimant's seniority, because the Claimant and his physician provided the Carrier with the medical documentation required for FMLA approval, and because the Carrier's termination of the Claimant's seniority was without just and sufficient cause. The Carrier contends that the instant claim should be denied in its entirety because the Claimant failed to produce satisfactory evidence that he was physically disabled during the ten-day period he was AWOL and studying abroad in Spain, because the Claimant's medical documentation was insufficient to grant FMLA leave, because the clarification letter submitted at the investigation does not abrogate the Claimant's obligations under the Agreement and Carrier policies, and because the Claimant's leave properly was treated as a resignation.

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

The Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of violating Carrier Rule 16 which clearly states that an employee who absents himself from work for ten (10) days without notifying the Carrier shall be considered as having resigned from the service and shall be removed from the seniority roster unless he or she furnishes satisfactory evidence of a physical disability. The record reveals that the Claimant failed to produce satisfactory evidence

that he was physically disabled while he was AWOL from the Carrier. The record shows that he was studying abroad in Spain during the time that he was allegedly physically disabled. The Claimant failed to bring in satisfactory medical evidence that he was ill. Given the clear language of the rule, the Claimant is considered as having resigned from the Carrier's employment when he was AWOL longer than the ten days.

Given the clear "walkaway" rule of the Carrier and the fact that the Claimant was AWOL for ten days without bringing in any legitimate evidence of a physical problem, this Board has no 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 1st day of March 2019.