

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44130  
Docket No. TD-45622  
20-3-NRAB-00003-190548**

**The Third Division consisted of the regular members and in addition Referee Meeta A. Bass when award was rendered.**

**(American Train Dispatchers Association  
PARTIES TO DISPUTE: (  
(Wisconsin Central Ltd.**

**STATEMENT OF CLAIM:**

**“The Carrier failed to allow the Claimant a reasonable amount of time to respond to requests for additional medical documentation regarding his previously approved Medical Leave of Absence before improperly removing him from the seniority roster and terminating his employment with the Carrier. Furthermore, the Carrier failed to comply with the provisions of Rule 10, when it failed to notify the General Chairman of the medical leave of absence, and when it failed to discuss the extension of said absence with the General Chairman.**

**The Organization now requests that the Claimant's seniority rights be restored, that the letter describing a forfeiture of seniority be rescinded, and that Claimant be allowed to return to service with all rights unimpaired. The Claimant must also be compensated for all lost time and benefits opportunities since being cleared by his physician to return to service on January 3, 2019.”**

**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 Claimant was initially approved for a Medical Leave of Absence (MLOA) for the period of August 1, 2018, through September 30, 2018. The Claimant requested and was granted, additional MLOA extensions, which extended his leave through October 31, 2018. On October 24, 2018, the Claimant informed his Leave Advisor that he had a medical appointment scheduled for November 6, 2018. His Leave Advisor extended the Claimant's MLOA until November 11, 2018. On November 12, 2018, the Claimant discussed his condition with his Leave Advisor and notified her that he had a follow-up appointment on November 15, 2018. By letter dated November 12, 2018, his Leave Advisor sent a cautionary letter requesting the Medical Status Report form to be completed and returned to her. By letter dated November 15, 2018, the Claimant's treating physician notified the Leave Administration that the Claimant was under the care of the Veterans Hospital and that he should remain off of work until January 14, 2019, with a return to light duty. On November 16, 2018, the Claimant contacted his Leave Advisor to notify her of his condition and discuss his extension, and the Leave Advisor instructed the Claimant to send in his documentation to be reviewed and discussed further with him. By letter dated November 16, 2018, the Claimant treating physician notified the Leave Administration of Claimant's treatment dates and extended his return to work to February 1, 2019, with light duty. No further discussion occurred between the Leave Administration and the Claimant on his documentation or leave extension. On November 27, 2018, the Superintendent sent a certified letter that stated that the Claimant's MLOA expired, that the extension of the MLOA requested had not been substantiated, that his Claimant's seniority had been forfeited, and that he was considered resigned from the service. On November 30, 2018, the Veterans Hospital sent another letter to Leave Administration, confirming that the Claimant signed an authorization for release of information for the release of his records to the Carrier, that Claimant was last seen for service on November 15, 2018, and the hospital had faxed correspondence on the same date.

The Organization filed this claim on December 14, 2018, alleging that the Carrier improperly removed the Claimant from the seniority roster and terminated his employment. By letter dated January 10, 2019, the Carrier denied the claim. By letter dated January 16, 2019, the Organization appealed the claim. By letter dated February

12, 2019, the Manager of Labor Relations declined the appeal. The parties were able to resolve the dispute and the matter is before this Board for final resolution.

**Applicable Agreement Provisions**

Rule 10, Section A, is as follows:

- “1. Any properly authorized period of absence shall be considered a leave of absence.

  - a. RTCs may, at the Carrier's discretion, be allowed time off without pay.
  - b. Regularly assigned RTCs reporting for service must do so in accordance with Section C of this Rule. Extra Board dispatchers shall be marked up for service at the time they report.
2. An RTC may be granted a leave of absence limited ( except in case of illness or other physical disability of himself or members of his immediate family, or as otherwise provided in this Agreement) to ninety (90) days without loss of seniority. A copy of the letter granting a leave of absence shall be furnished to the General Chairman. Leave of absence in excess of ninety (90) days shall be by agreement between the General Chairman and management.
3. An RTC who fails to obtain an extension of leave of absence, or to report for duty at the expiration of such leave of absence, (except when failure to return is due to unavoidable circumstances), shall forfeit his/her seniority.”

The Organization contends that the Carrier did not afford the Claimant the same opportunities to submit medical documentation that the Carrier extended to other employees. The Organization submits other arbitral precedents where the employees were afforded extended time to submit medical documentation and highlights PLB 7227 Award No. 2 where the Claimant was afforded 505 days to provide the additional documentation but the Carrier only granted the Claimant a limited amount of time. The Organization also contends that the Claimant's treating healthcare provider submitted

letters to the Carrier on November 15, 2018, and November 16, 2018, which indicated that the Claimant could not return to work until after January 1, 2019, due to his medical condition. The Organization argues that the Carrier's demand for a copy of the fax cover sheet is excessive and unreasonable when the Claimant's healthcare provider faxed additional documentation on November 30, 2018, and confirmed that the Claimant was last seen on November 15, 2018, and the correspondence was faxed to the Carrier. Lastly, the Organization contends that the claim should be sustained.

The Carrier contends that the Organization has not met its burden to prove there has been a violation of the Agreement. The Carrier argues that the Organization did not establish evidence to refute the fact that the Claimant failed to return to work or properly obtain an extension of his medical leave of absence by November 11, 2018. The Carrier also contends that the Company cannot be accused of treating others differently when there were no others that were similarly situated as the Claimant. Further, the Carrier asserts that the Claimant was granted an extension to his medical leave which expired on November 11, 2018, and the Claimant who was well aware of his responsibility failed to provide sufficient documentation either to extend his leave or to return to work by November 11, 2018. The Carrier argues that the after-the-fact conversations and information provided, even if considered as timely for argument's sake, were still improper and insufficient to extend the Claimant's medical leave. The Carrier also contends that the documents Claimant proffered did not adequately satisfy the requirements necessary to clear him for a return to work. Lastly, the Carrier maintains that no violation exists and the claim should be dismissed in its entirety.

This Board has carefully reviewed the record in its entirety. The Board finds that the Organization has demonstrated that the Carrier violated Rule 10, Section A. The record establishes that the Claimant did comply with the proper procedures for requesting leave and extending his leave through the October 31, 2018 expiration. On November 16, 2019, the Claimant discussed his medical condition with his Leave Advisor who advised the Claimant to send in his documentation to be reviewed with further discussion with him to follow once the documentation was received. The Claimant failed to provide the MSR as requested in the November 12, 2018 cautionary letter to his Leave Advisor, as required by the Carrier's policy, but the Veterans Hospital submitted documentation dated November 16, 2018 in lieu of the same which verified his condition, dates of care, and return to light duty work. However, there was no further discussion regarding his condition between Leave Administration and the Claimant but by letter dated November 27, 2018, the Carrier notified the Claimant that

he had resigned from his position and his seniority rights were terminated. The Board finds substantial compliance by the Claimant in his efforts to protect his employment with a rush to judgment by the Carrier when the Leave Advisor failed to follow-up with the Claimant following the receipt of the medical documentation dated November 16, 2018. The Board therefore finds that the Claimant should be returned to the seniority roster. The Board finds that the record does establish the MSR form and other company return to work forms were never submitted, therefore, no backpay is awarded.

**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 11<sup>th</sup> day of August 2020.