

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44668  
Docket No. MW-46402  
22-3-NRAB-00003-200907**

**The Third Division consisted of the regular members and in addition Referee Michael Capone when award was rendered.**

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

**PARTIES TO DISPUTE: (**

**(BNSF Railway Company (Former Burlington Northern  
(Railroad Company)**

**STATEMENT OF CLAIM:**

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

- (1) The Agreement was violated when the Carrier terminated Mr. M. Wood’s seniority by letter dated March 25, 2019 (System File T-D-5956-M/11-19-0487 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, the Organization requests that ‘... Claimant’s seniority rights be restored, be allowed to place his bump and get back to working for BNSF and paid for time lost.”**

**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, Matthew Woods, is a Machine Operator employed by the Carrier since July 14, 1993. On May 6, 2019, the Organization filed a claim asserting that the Carrier violated Rule 15 when it determined that the Claimant forfeited his seniority rights after failing to report to work on March 19, 2019, following an approved leave of absence. The record indicates that the Carrier denied subsequent appeals by the Organization and rendered its final decision on October 24, 2019. The Organization rejected the Carrier's decision and moved to have the matter adjudicated before this Board.

**Relevant Contract Provisions**

**Rule 15. LEAVE OF ABSENCE, in pertinent part, reads as follows:**

- C. A request for leave of absence in excess of fifteen (15) calendar days must be made in writing by the employee to his immediate supervisor.**

**A request for leave of absence of fifteen (15) calendar days' [sic] or less duration need not be made in writing, but an employee desiring such a leave of absence must secure approval from his immediate superior.**

**\* \* \***

- E. An employee on leave of absence accepting other employment without first obtaining written permission from the Company and the duly accredited representative of the employees, will be considered as having left the service and all seniority rights will be forfeited.**

**An employee failing to report for duty on or before the expiration of their leave of absence will forfeit all seniority rights, unless an extension is obtained.**

The Organization maintains that it contacted the Carrier on March 8, 2019, on behalf of the Claimant, and reached an agreement to provide him with a two-week leave of absence, which was to end on March 22, 2018. According to the Organization, the Claimant received written notice, dated March 20, 2018, that his leave of absence ("LOA") was granted from March 5 through March 18, 2019.

The Organization references the Carrier's letter to the Claimant, dated March 25, 2019, wherein he was notified that his seniority had been forfeited after he failed to report for duty on March 19, 2018, after his LOA ended on March 18. The Organization argues that the self-executing provision in Rule 15 is not applicable since the LOA was not approved until March 20, 2018. In addition, it asserts that Roadmaster Richard Woodside unilaterally decided to backdate the LOA to March 5, 2018, resulting in the leave ending on March 18, without providing the Claimant notice of the change. The Organization maintains that the Carrier's mishandling of the LOA confirms the Claimant did not intentionally or negligently abandon his position and therefore, cannot be grounds to apply the self-executing effect of Rule 15. It cites arbitral precedent where miscommunication and inefficient handling of a LOA has led to mitigation of the self-executing provisions.

The Carrier avers that the Claimant had been granted a LOA several times while employed and knew he had to request an extension if he could not return to work by March 18, 2019. It maintains that Roadmaster Woodside used a start date for the LOA of March 5, 2018, since the Claimant had been absent without leave for three days before March 8. As such, the Carrier contends that the 15-day LOA correctly ended on March 18, 2019. Furthermore, the Carrier asserts that Mr. Woodside contacted the Claimant to let him know he was to return to work on March 19, 2018. It argues that the Claimant's failure to return to work as directed triggers the self-executing provision of Rule 15. The Carrier cites arbitral precedent it claims has consistently found that applying a self-executing provision is not disciplinary but self-invoking where an employee fails to act within the time limits contained in the rule.

The Board finds that Organization has met its burden of proof that the self-executing authority of Rule 15 does not apply to the facts and circumstances contained in the record here. We find that the handling of the Claimant's LOA was deficient when he was not provided with timely and proper notice of the period he was on approved leave and when he was to return to work.

Here, the record confirms that the Claimant did not receive written notice of the dates of his leave until March 20, 2018. Roadmaster Woodside did not discuss the LOA with the Claimant until March 19, 2018, which was a day after the leave ended. The text message of March 8, 2018, between the Organization and Mr. Woodside clearly indicates a request for a two-week leave of absence. The record does not indicate that a reply to the text message was made or that the Carrier

notified the Claimant or the Organization that the LOA started on March 5, 2018 and ended on March 18 instead of March 22, 2018. Further, Mr. Woodside did not notify the Carrier's "Leave Administration" of the approved leave period until March 19, 2018.

As such, we find evidence of miscommunication and defective handling of the Claimant's leave of absence and therefore, the self-executing provisions of Rule 15, based on the fact and circumstances contained in the record here, cannot be invoked to deprive him of his seniority. However, we also find that the Claimant contributed to the miscommunication. He did not take any steps to secure the requested leave as provided for in Rule 15C. We conclude that the Claimant shares culpability where he failed to take reasonable measures to ascertain the status of his leave after March 8, 2018.

Based on the foregoing, the Claimant shall be restored to service with his seniority unimpaired but without compensation for time lost. No other remedy requested is awarded.

In summary, we have reviewed and carefully weighed all the arguments and evidence in the record and have found that it is not necessary to address each facet in these Findings. We find the Organization has met its burden of proof that the Claimant did not forfeit his seniority.

### **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 28<sup>th</sup> day of January 2022.