

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44669  
Docket No. MW-46404  
22-3-NRAB-00003-210141**

**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. J. Arens’ seniority by letter dated July 24, 2019 and when it failed to extend his medical leave of absence (System File T-D-6113-M/11-19-0743 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, we request that Claimant J. Arens’ seniority be restored, be placed on a medical leave of absence and that the Claimant be allowed to return to Carrier service when he is medically able to do so. We are also requesting that the Claimant be paid eight (8) hours for every day since he was cleared of a medical leave and could have returned to work.”**

**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, Joseph Arens, was notified by the Carrier on July 24, 2019 that he had forfeited his seniority after failing to submit the required medical documentation related to a medical leave of absence (hereinafter referred to as the "LOA") for the period of July 18, 2019 through July 22, 2019. On August 29, 2019, the Organization filed a claim asserting that the Carrier violated the self-executing provision in Rule 15 when it determined that the Claimant did not extend his medical leave of absence and therefore, forfeited his seniority rights. The record indicates that the Carrier denied subsequent appeals by the Organization and rendered its final decision on February 13, 2020. 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:**

- 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 the Claimant provided the Carrier with the requisite medical documentation throughout his LOA. It also asserts that the Claimant's physician submitted a letter, dated July 24, 2019, indicating that he was to return to work on July 29, 2019. The Organization further cites the medical documentation, dated July 18, 2019, stating that the Claimant was ill with the stomach flu and would not be able to work for five days.

The Organization argues that the self-executing provision is not applicable since the Claimant provided the required medical documentation when available

and the Carrier mishandled the communication with the Claimant resulting in the improper application 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 maintains that the Organization has not provided any evidence of the Claimant's compliance with his obligation to provide medical documentation for his LOA to be extended beyond July 22, 2019. It argues that the Claimant's failure to provide the necessary medical documentation triggers the self-executing provision of Rule 15. The Carrier cites arbitral precedent it claims has consistently found that self-executing provisions are not disciplinary but self-invoking where an employee fails to act within the time limits contained in the rule.

The Board finds the Organization has not 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. The record contains no evidence that the Claimant provided the Carrier with medical documentation to justify his continued absence. He was contacted on July 19, 2019 by the Carrier alerting him that he needed to provide the documentation for an extension. On July 22, 2019, the Claimant contacted the Carrier asserting he did not have the Medical Status Form, which was emailed to him for his doctor to complete and submit to the Leave Administration. Nothing in the record confirms that the Carrier received any documentation from the Claimant's physician.

Based on the foregoing, we find that the Claimant's failure to ensure that he complied with the Carrier's request for medical documentation triggers the self-executing application of Rule 15. There is ample arbitral precedent to find that self-executing provisions are applicable where the Claimant has failed to comply with the express requirements of the rule. Without evidence of verifiable mitigating circumstances Rule 15 invokes the forfeiture of seniority and terminates the employment status without initiating a disciplinary process. The record confirms the Claimant was not approved for an extended LOA and did not provide sufficient evidence to justify his absence after July 22, 2019.

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 not met its burden of proof that the Claimant did not forfeit his seniority.

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