

## Public Law Board No. 6204

### Parties to Dispute

Brotherhood of Maintenance of Way	)	
Employees	)	
	)	
vs	)	Case 28/Award 28
	)	
Burlington Northern Santa Fe	)	

### Statement of Claim

1. The Carrier violated the Agreement when it removed S. L. Lambert from the seniority roster and closed out his record on September 9, 2002.
2. As a consequence of the violation referred to in Part 1 Mr. S. L. Lambert shall now have his seniority restored and be paid for all lost wages incurred.

### Background

The Claimant was sent a certified letter on August 22, 2002 advising him that he had been recalled to service at BNSF. In this letter, sent by certified mail, the Claimant was told that he was to report to Roadmaster Gene Shymanski or his representative on district 009 at Keenesbur, Colorado. He was to work on termite/frog welding gang YRWX0355, position 47008 with assignment as a welder. He was advised that failure to report within ten (10) days of notification "...may result in the loss of...seniority..." If he had been furloughed more than 180 days he was told that he would be required to pass a company physical and visual exam. The letter was sent to the Claimant by the Manager of Maintenance Support in Kansas City, Kansas. The letter was sent to the Claimant's address in McCook, Nebraska.

On September 18, 2002 the Claimant was advised that his seniority was terminated because of his failure to answer the recall on or before September 9, 2002.

### **Discussion & Findings**

The Organization's claim which was filed on October 14, 2002 requests that the Claimant be put back to work and be paid for all lost time. Contention is that the Carrier was in violation of the labor Agreement Rules when the Claimant was advised on September 9, 2002 that his seniority had been terminated. According to the union the Claimant last worked on July 31, 2002 and his position had been abolished. According to the union the Claimant had a medical condition at this time that he wanted to take care of. The claim states that the Mr. Lambert advised a road master about this to get the forms to fill out to place himself on medical leave but that the road master told him that he had to go elsewhere to get the forms. The claim is that he then contacted the "Continuum" contact person in the area who allegedly stated that she would send him the forms but that she sent the wrong ones. "Continuum" is a firm under contract with the Carrier to handle medical leaves of absence. The claim states that the Claimant finally got the proper forms from the train master.

While all of this was going on from July 31, 2002 through August 22, 2002 the Claimant was sent his return to work notice. The record shows that he received this notice, he signed it and it went to the correct address. He was the proper recipient of such a notice since he was on furlough status. Under Rule 9 of the labor Agreement the

Claimant had ten (10) days in which to respond to the notice of August 22, 2002. The language of the rule at bar states the following in pertinent part.

**Rule 9**

When an employee laid off by reason of force reduction desires to retain his seniority rights, he must within ten (10) calendar days of date so affected file his name and address in writing on the form supplied for that purpose with his foreman or supervisor with copy to the General Chairman, receipt of which will be acknowledged in writing by the company. He must advise in writing of any subsequent change of address, receipt of which will be similarly acknowledged. When new positions of more than thirty (30) days' duration occur, employees who have complied with this rule will be called back to service in the order of their seniority. Failure to file his name and address or failure to return to service within (10) calendar days unless prevented by sickness, or unless satisfactory reason is given for not doing so, will result in loss of all seniority rights...

The record shows that the Claimant did not report to work by September 9, 2002 as he ought to have when he was recalled. Nor did he provide medical information for not having done so. The record shows that the Claimant called the manpower supervisor on August 26, 2002 or some four days after receiving the recall letter and he states to the supervisor that he was in receipt of such letter. Concurrently he advised her of his medical condition with information that he was in the "...process of taking a medical leave of absence..."<sup>1</sup> It is clear from this conversation that the Claimant was aware of the requirement to take a medical leave to protect his job, given the recall letter he had received, and the manpower supervisor also made that abundantly clear to him when she told him that: "...you better take one to protect your job...". It was during this

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<sup>1</sup> The full transcript of that phone conversation is found in Carrier' Exhibit 9 @ pp. 1-4.

conversation that the manpower specialist advised the Claimant to contact the "Continuum" contact for the forms and so forth. According to the Claimant he thought he was in need of a hip replacement and according to him he also was able to drive his vehicle.

A review of the full record in this case by the Board establishes that the Claimant stated that he had a medical condition but there is no more information about such condition beyond such statement. He never filed for a medical leave of absence albeit he obviously knew that was a requirement once he had his recall papers in hand. The Claimant told that manpower supervisor that he was in the "...process..." of taking a leave of absence. But there is no evidence of record that this ever happened. It is clear from the Claimant's own conversation with the manpower supervisor that he had not yet had surgery by the date of August 26, 2002 and it is also clear that he was able to drive and get around in order to obtain the proper papers and get them filed. He states that he could drive his vehicle. The Claimant states that "Continuum" sent him the wrong papers. It is unclear how that could have happened because according to the record it was this company under contract that processed medical leaves. So the company must have sent the Claimant the wrong papers to have done the thing that it was paid under contract to do. It would have been worthwhile to have had information from "Continuum" on this contention. There is none in the record.

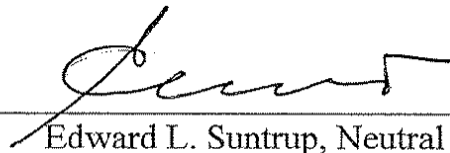
Rule 9 is a self-executing rule. This Board is not the first arbitral forum in this

industry to underline this. 2 Protection for recall under the labor Agreement's seniority provisions are in accordance with the procedures outlined by the parties in this Rule.

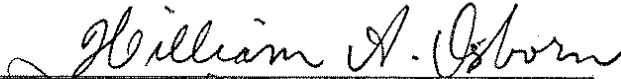
This is a contract interpretation case and the burden of proof lies with the Claimant as moving party. There is insufficient evidence of record to warrant conclusion that this burden has been reasonably met in this case and the Board has no alternative but to rule accordingly.

**Award**

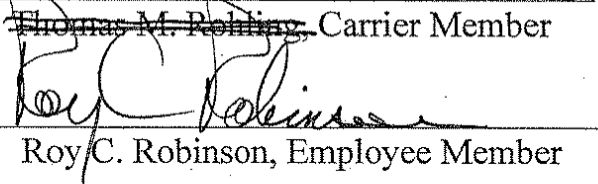
The claim is denied.



Edward L. Suntrup, Neutral Member



~~Thomas M. Rohling~~, Carrier Member



Roy C. Robinson, Employee Member

Date: June 4, 2007