

Public Law Board No. 6204

Parties to Dispute

Brotherhood of Maintenance of Way
Employees

vs

Burlington Northern Santa Fe

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Case 34/Award 34

Statement of Claim

1. The dismissal (seniority termination) of M. J. Koziara by notification dated May 16, 2003 from Structures Supervisor L. Welte was arbitrary, capricious and in violation of the labor Agreement.
2. As a consequence of the violation referred to in Part 1 above, Mr. M. J. Koziara shall now be restored to service with all back pay and benefits.

Background

The Claimant was advised on January 1, 2003 that he was being recalled to service of the Carrier to work on mobile gang BBCX0147. He was advised to report to structures supervisor Louis Welte or his representative on district 500. The Claimant subsequently applied for and received a leave of absence running from January 16, 2003 through January 31, 2003. On January 17, 2003 he wrote to supervisor Welte requesting that he be granted a medical leave of absence to extend no more than 60 days "...to deal with my conditions...". This note had attached to it a medical form filled out by a doctor. That form states that the Claimant was unable to travel "...60 miles from home base..." and that he could return to work "...with limitations..." on January 16, 2003 through March 15, 2003. Thus, as a preliminary matter, the Claimant requested a leave but his medical note

stated that he was able to work with provios albeit the latter are not clarified.

On January 21, 2003 road master Welte wrote to the Claimant that his request for an extension of his leave of absence beyond January 31, 2003 was being denied. He was also told to contact the regional manager of medical and environmental health in Denver, Colorado to discuss issues involved with his request for a leave of absence. The Claimant responded to this by providing a limited release of documents by health care providers whom he had been seeing. These were subsequently contacted by the Carrier and two of the four of these providers gave information to the Carrier. The substance of that information is condensed by the Carrier's assistant medical officer in a letter she wrote to the Claimant on April 8, 2003. It ought to be observed here that albeit the Claimant's leave terminated officially starting on February 1, 2003 he still had not returned to work. According to this Carrier officer information provided to her was that the Claimant "...seemed..." to have either an unresolved social situation at home disallowing him from working in an unrestricted manner, or a behavioral health issue having the same effect for which the Claimant had not pursued treatment. The recommendation of the assistant medical officer, to management, was that the Claimant be removed from service until "...some clarification regarding (his) current status (was) obtained...". The Claimant was given until April 21, 2003 to provide information to clarify his status and to comply with any recommendations made to him by EAP. Thus he was put on medical leave by the assistant director from April 8-21, 2003 so that he might respond to the admonitions given to him to provide clarification on his status and/or to get help. In the interim, and

somewhat inexplicably, the Claimant did bid on a position in April 15, 2003 but was not awarded it since he was on medical leave during the April 8-21, 2003 time frame.

Thereafter the Claimant was sent a letter by road master Welte, under date of May 16, 2003 advising him that he was being terminated since he had failed to obtain an extension of his leave of absence, and since he had failed to report for duty.

Discussion & Findings

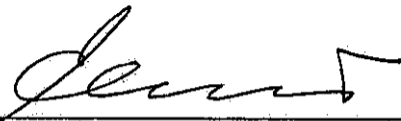
The Claimant in this case was explicitly told by the road master on January 21, 2003 that his leave of absence was not being extended and he was concurrently told to contact the medical and environmental health department in Denver. The Claimant argues that because of this he assumed that his leave of absence was extended beyond January 31, 2003. There is no documentation to that effect in the record. Further, the regional manager of medical and environmental health states that while she continued to seek information from the Claimant about his condition she (1) never received such information from him and (2) never herself placed him on a medical leave of absence. The Carrier's assistant medical director did place the Claimant on a medical leave for a short period of time in April of 2003 (from April 8, 2003 through April 21, 2003) with what appears to have been a courtesy so that he could respond to continuing requests for clarification about his status and/or to get help. It is true that the Claimant did bid on a position in April of 2003. But if he did so, he could not have been on medical leave as he claimed and he must obviously have known that. Employees on medical leave to not bid

on positions.

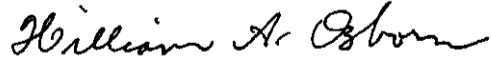
Any employee under the operant labor Agreement must retain approved leave of absence. This is required under Rule 15. The record in this case fails to warrant conclusion that the Claimant to this case did that. Thus the letter of dismissal he received on May 16, 2003 from the Carrier was not in error.

Award

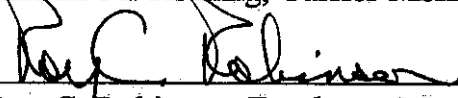
The claim is denied.



Edward L. Suntrup, Neutral Member



Thomas M. Rohling, Carrier Member



Roy C. Robinson, Employee Member

Date: 60/31/06