

PUBLIC LAW BOARD NO. 7660  
CASE NO. 1

BROTHERHOOD OF MAINTENANCE OF WAY  
EMPLOYEES

PARTIES  
TO DISPUTE:

and

UNION PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Carrier’s termination of Claimant D. Loera’s seniority by letter dated June 11, 2012 was improper and a violation of the Agreement (System File T-1245S-501/1578265 SPW).
2. As a consequence of the violation referred to in Part 1 above, Claimant Loera must be compensated for all losses suffered for the improper seniority termination.”

FINDINGS:

Upon the whole record, after hearing, this Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

Soon after Claimant commenced employment on January 30, 2012, he learned of his mother’s terminal illness in Mexico. Since he was her primary caregiver, he requested and received a 2 week Leave of Absence (LOA) from Manager Johnson. As his leave time was expiring, Claimant asked the Organization’s help in getting an extension of his LOA. There was a phone conversation between Vice Chairman Caldwell and Director

Taylor explaining the situation, with an email confirmation of the agreement to extend the time of the leave on April 25, 2012, in which Taylor indicated that they would work with Claimant, and to "keep them informed on the possible return date as things develop." From this the Organization and Claimant understood that he had been granted a LOA until his mother's situation was resolved. However, Carrier claimed to have sent Claimant a certified letter granting his LOA to May 18, 2012, which was never received and, in the absence of further contact, mailed him a letter on June 11, 2012 indicating that his continuous unauthorized absence since May 21 resulted in the termination of his seniority and employment under Rule 45. During a telephone conference, Claimant indicated that he did speak with Manager Johnson on both April 26 and May 9, as well as the timekeeper on May 9, and neither informed him that he had a return to work date of May 18, 2012. Carrier's letter upholding the decision to remove Claimant's seniority and terminate his employment resulted in the filing of the instant claim.

The Organization argues that there is no evidence showing that Claimant was notified of a May 18 return to work date, and a copy of the alleged April 26 certified letter was never proffered during the conference or until the denial of the claim, had no official letterhead or signature, and was admittedly returned to Carrier as unclaimed. It points out that during the conference Claimant stated that he notified Carrier of his new address, but they apparently did not update their files until July 29, after his seniority was terminated. The Organization contends that, absent receipt of communication to the contrary, it was reasonable for Claimant to conclude that he had no further reporting obligation until his return to work date was to be set. Under such circumstances, the Organization asserts that Carrier's reliance on Rule 45 to terminate Claimant's seniority was arbitrary and unreasonable, and a violation of the Agreement.

Carrier contends that the record supports the finding that Claimant was granted a LOA ending on May 18, 2012, and that his failure to return to work or provide

documentation to support a further extension resulted in his unauthorized absence. It notes that Rule 45 is a self-executing forfeiture provision for an absence without authorization for 30 days, and that it was reasonably applied in this case. Carrier posits that it was Claimant's responsibility to assure that his new address was updated on its records, which he did not do, resulting in his failure to receive and timely respond to the April 26, 2012 letter concerning his obligations at the end of his LOA, supporting its action in this case.

A careful review of the record convinces the Board that, at best, what occurred in this case was a misunderstanding regarding the length of the LOA granted to Claimant on April 25, 2012. There is no evidence that Claimant received the letter telling him to report on May 18 or provide documents supporting a further extension of his LOA, and Carrier failed to show that it was sent to Claimant's address of record, or refute Claimant's assertion that he was never informed of a return to work date during his conversations with Manager Johnson or the timekeeper. Carrier admittedly understood the underlying basis for Claimant's request for a LOA, agreed to work with him, and it is clear there was a misunderstanding concerning whether the Claimant was to keep in regular contact until the situation with his mother was resolved and he was ready to return to work.

Under these circumstances, the Board concludes that Carrier's reliance upon Rule 45 to terminate Claimant's seniority was excessive, and directs that his seniority be reinstated. However, as there was a misunderstanding between the parties on the Claimant's responsibility to keep in contact with the Carrier; and since Claimant was a recent hire who had just gone through training at the time of his request for a LOA, Carrier worked with him so he could attend to his personal issues, and there is no evidence what happened to his former position, we deem it inappropriate to order any compensation in this case. Upon the restoration of his seniority, Claimant shall be entitled to bid to a vacant position, but not to exercise a displacement.

AWARD:

The claim is sustained in Accordance with the Findings.

*Margo R. Newman*

Margo R. Newman  
Neutral Chairperson

*K. N. Novak*

K. N. Novak  
Carrier Member

*Andrew Mulford*

Andrew Mulford  
Employee Member

Dated: 5/30/14

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