

PUBLIC LAW BOARD NO. 7194

AWARD NO. 14

CASE NO. 14

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees Division – IBT Rail Conference

vs.

Union Pacific Railroad Company

ARBITRATOR: Janice K. Frankman

DECISION: Claim denied

STATEMENT OF CLAIM:

1. The termination of Trackman J.S. Chavez for voluntarily forfeiting his seniority and employment relationship with Carrier for failure to comply with Rule 25 of the parties' Agreement is unjust, unwarranted and in violation of the Agreement. (Carrier's File 1478631).
2. As a consequence of the unjust termination, we request that Mr. Chavez' termination be expunged from his personnel record, that his seniority be restored and that he be compensated for any and all wage loss in the event he returns to service after his medical leave.

FINDINGS:

The Board, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute herein; and that the parties were given due notice of the hearing.

Claimant commenced service with Carrier on January 22, 1971, and held seniority rights in several classes of the Track Sub-Department. He was injured while on-duty on October 26, 2006. His seniority rights and employment relationship were terminated on March 30, 2007, for failure to protect his assignment under Leave of Absence Rule 25.

Under Rule 25, employees granted leave of absence under proper authority maintain their seniority. Where they fail to return before a leave of absence or extended leave expires, they lose their seniority rights. Where leave in excess of 15 days is requested account of sickness or injury, employees must request medical leave in writing supported by a physician's statement including specific reasons for and the expected duration of the leave. An extension must also be supported by a physician's statement.

Rule 48 requires a fair and impartial hearing prior to imposition of dismissal except in cases where an employee has absented himself for more than five consecutive days without proper authority in which case, he is considered to have voluntarily forfeited his seniority rights and employment relationship.

By letter dated December 20, 2006, Claimant's Physician advised Carrier in Omaha that he was treating Claimant for neck and back injuries and that Claimant would not be able to return to work until February 28, 2007. He completed a Physician's Statement dated 1-10-07 sent by UnitedHealthcare to Claimant, confirming Claimant's disability beginning on October 26, 2006. By communication dated January 21, 2007, "to whom it may concern", Physician verified Claimant's continuing and expected disability to February 28, 2007.

Carrier corresponded with Claimant on January 12, 15, and 30; February 9; and March 30, 2007, concerning his medical leave of absence; notifying him of requirements to provide medical documentation in the event he was not released to return to work; directing him to medical examination, scheduled with a designated physician to determine his current medical status and ability to perform his work duties; and, finally, terminating his seniority rights and employment relationship. The first letter notified him that he had been approved for medical leave through January 15. The second directed him to a medical examination on January 26, which he did not attend. The third set February 6, for the medical exam and cautioned if he failed to comply with Carrier's instruction to attend and cooperate in the examination, he might be subject to disciplinary action. The fourth set a third date for the examination and warned: "If you fail to attend this appointment, you will be considered insubordinate and appropriate action will be taken under the Railroad's UPGRADE Policy." Copies of the letters were directed to individuals and departments in Omaha and Bakersfield CA. Claimant did not respond to any of the letters. Organization submitted this Claim on his behalf on May 27, 2007.

Organization argues Claimant's dismissal is unwarranted, unjust, excessive and in violation of the parties' CBA. It argues Carrier violated the Agreement by dismissing Claimant without a hearing and by failing to demonstrate violation of Rule 25. It argues Carrier knew Claimant was disabled and treating and was careless with a tenured employee when it terminated his seniority rights and employment relationship without providing him an opportunity to be heard as to why he had not responded to Carrier's letters. It argues Carrier has failed to produce certified receipts for the mail it sent Claimant. Organization argues that Carrier failed to cite rule violations, and if failure to follow instructions was the basis for the discipline, UPGRADE supports level 2 discipline, not dismissal. It argues Claimant never submitted a request for leave, therefore, he could not be sanctioned for failing to extend it. Organization points to Claimant's physician's communication with Carrier and Carrier's knowledge that Claimant was receiving payments through disability insurance. It argues that Claimant could not have received Carrier's January 12, letter before the January 15, expiration date of his authorized leave, and, therefore, could not have timely sought an extension of it.

Carrier argues Rule 25 expressly provides for Claimant's termination under the circumstances. It argues it is well-established that it is a self-executing Rule that is triggered by Claimant's voluntary failure to protect his assignment. It argues that Rule 48 has not been violated, and that its action is not discipline subject to UPGRADE or the provisions of Rule 48 which require a fair and impartial hearing. Carrier argues that it gave Claimant several opportunities to address its concerns and he failed to respond. It asserts that Claimant and Organization were provided with written notice and warning of this outcome.

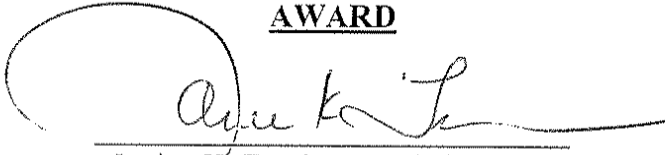
Carrier has provided substantial evidence in support of its case. Organization has failed to refute that Claimant received several letters seeking required information in order to support extension of his medical leave of absence. Carrier provided numerous opportunities for Claimant to protect his assignment before terminating his employment relationship and after Organization filed this Claim on his behalf. The fact that Claimant never requested medical

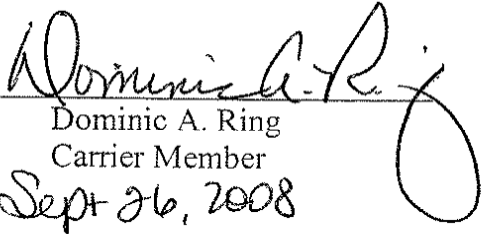
leave of absence is a damaging admission contrary to Organization's argument that he couldn't seek extension of something he never requested. It is well settled that physician's notes are not sufficient to satisfy the Leave of Absence Rule requirements. In addition, it is noted that Carrier did not take action in this case until one month after the date that physician had advised Claimant would likely be able to return to work. No reason has been provided for Claimant's failure to respond to Carrier's proper requests for documentation from him and his cooperation in having a medical exam to provide current information relative to his fitness for duty and return to work.

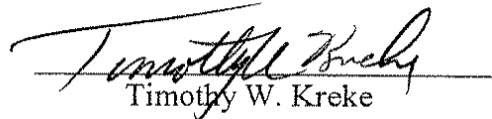
Carrier confused the issues in this case by reference to UPGRADE and discipline throughout the handling of the matter. However, the express basis for terminating Claimant's seniority was Rule 25 violation which is supported by the record. Express provisions of both Rules 25 and 48 support Carrier's action. The language of the Rules is clear and unambiguous and not subject to interpretation as suggested by Organization. This Claim is properly denied.

AWARD

Claim denied.


Janice K. Frankman, Chairperson
Neutral Member


Dominic A. Ring
Carrier Member
Sept 26, 2008


Timothy W. Kreke
Organization Member
Sept 26, 2008