

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 7258

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES)
and) Case No. 13
UNION PACIFIC RAILROAD COMPANY) Award No. 13
_____)

Richard K. Hanft, Chairman & Neutral Member
T. W. Kreke, Employee Member
D. A. Ring, Carrier Member

Hearing Date: November 12, 2008

STATEMENT OF CLAIM:

1. The dismissal of Track Laborer Charles W. Eden for violation of Rule 25 of the Agreement in connection with his failure to provide medical information to extend his leave of absence is improper, unjust, unwarranted, based on unproven charges and in violation of the Agreement (Carrier's File 1489230 UPS).
2. As a consequence of Part 1 above, we request that Mr. Eden's seniority rights and benefits be immediately reinstated and the letter of dismissal be removed from his personal record.

FINDINGS:

Public Law Board No. 7258 upon the whole record and all of the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute herein; and, that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

The record reflects that Claimant became ill in February, 2007 and was admitted to the hospital on February 5, 2007 for treatment of a lung disorder. Claimant was granted medical leave through March 16, 2007. Because Claimant did not return to work by March 16, Carrier's Health and Medical Department advised Claimant by Certified Mail on April 11, 2007 with a followup letter on April 19, 2007 that he must submit medical documentation to support his continued absence due to illness. It is undisputed that Claimant failed to comply with the rules and instructions required to extend his leave of absence. Again, on June 29, 2007 Claimant was advised by Certified Mail to forward medical information required to extend his medical leave of absence by or before July 20, 2007. That letter further warned Claimant that "Your continued

failure to comply by the date specified above may result in disciplinary action for failure to comply with instructions.” Again, Claimant did not respond to the Medical Department’s request for information.

On August 9, 2007 Claimant was advised that as a result of his failure to respond to Carrier’s instructions to submit medical evidence to support his medical leave of absence and pursuant to Rule 25, his seniority rights and employment relationship with the Carrier were terminated. In response to Carrier’s notification of Claimant’s dismissal, the Organization requested on August 22, 2007 an unjust treatment hearing which the Carrier denied. Thereafter, on August 24, Claimant submitted a letter explaining his failure to timely respond accompanied by seventy-three (73) pages of medical documentation of his continued illness. On October 3, 2007 the Organization filed a claim on claimant’s behalf which Carrier denied on November 27, 2007. Appeal to the denial was made on January 17, 2008 and denied on March 20, 2008. The matter was discussed in conference on May 2, 2008 without resolution.

The Organization contends that Claimant did not fully understand what the Carrier’s instructions to forward medical evidence required of him. Thus, the Organization asserts, in light of Claimant’s misunderstanding of the instructions given him, the termination of a thirty-one year veteran employee with no previous disciplinary history is unjust and unwarranted. The record, however, supports the Carrier’s argument that Claimant voluntarily forfeited his seniority and employment status under the self-invoking Rule 25 and that Carrier went beyond its obligations under Rule 25 to induce the Claimant to comply with the rule. The Carrier points out that under the rule, it is the employee’s obligation to obtain an extension to his or her leave if unable to return to work upon the expiration of the initial grant of leave. Carrier submits that in the instant case, even after the expiration of Claimant’s initial leave on March 16, 2007 it wrote to him requesting medical records to support extending the leave not once, but twice and Claimant ignored the requests for a period of four full months. Thus, the Carrier avers, it complied with and applied the rule as agreed to in the Agreement.

We find that Carrier did not violate the Agreement in applying Rule 25 in the circumstances of this case. Rule 25 is a self-executing rule invoked when an employee fails to act in a manner to protect his employment. Claimant was advised to forward medical documentation to substantiate his continued need for medical leave and he failed to do so, not once, but twice. Under a literal reading of the rule, the employee has no one to blame but himself. However, it is well established that in regard to some of the Agreement’s self-executing rules Boards have recognized that confusion in communication contributing to Claimant’s predicament can mitigate against the harshness resulting from a literal application of self-executing rules calling for forfeiture of seniority. This case is a perfect example of just such circumstance.

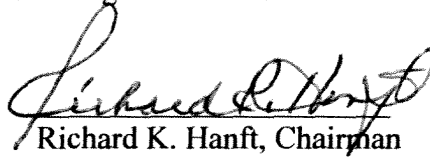
Although this Board has no authority to grant leniency, we nevertheless conclude that the circumstances of this case warrant mitigating the harshness of the literal application of Rule 25. Accordingly, in line with established precedent on this property, we shall award that Claimant be reinstated to service with seniority unimpaired but without compensation for time out of service.

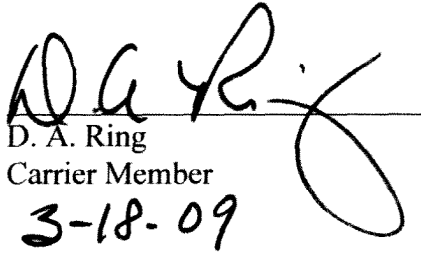
AWARD

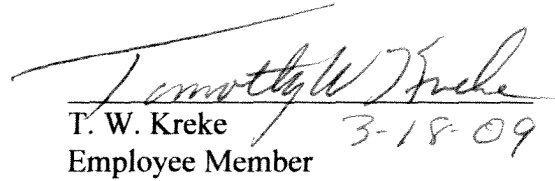
Claim sustained in accordance with the findings.

ORDER

The Board, having determined that an award favorable to the Claimant be made, hereby orders the Carrier to make the award effective within thirty (30) days following the date two members of the Board affix their signatures hereto.


Richard K. Hanft, Chairman


D. A. Ring
Carrier Member
3-18-09


T. W. Kreke
Employee Member
3-18-09

Dated at Chicago, Illinois, January 27, 2009