

PUBLIC LAW BOARD NO. 7566

BROTHERHOOD OF MAINTENANCE)
OF WAY EMPLOYES DIVISION)
IBT RAIL CONFERENCE)
and)
CANADIAN NATIONAL/WISCONSIN)
CENTRAL LTD.)

Docket No. 22

Claimant: K. Grimm

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

1. The Carrier's decision to terminate employee K. Grimm's seniority for the alleged violation of Rule 311 in connection with his alleged failure to return to service following the April 1, 2011 expiration of a medical leave of absence was improper, unjust, unwarranted and in violation of the Agreement (Carrier's File WC-BMWED-2011-00019).
2. As a consequence of the Carrier's violation referred to in Part 1 above, Claimant K. Grimm shall be restored to service with seniority and all other rights unimpaired and he shall be compensated for any and all wage loss suffered and/or payments, co-payments and any other financial loss due to his insurance being terminated, beginning on April 15, 2011 and continuing until he is fully restored to service."

Findings:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier or employee within the meaning of the Railway Labor Act as approved June 21, 1934.

Public Law Board 7566 has jurisdiction over the parties and the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

The Carrier mailed Claimant a letter dated April 11, 2011, which provided:

Our records indicate that you have failed to return from your approved medical leave which expired on April 1, 2011 and you have failed to supply CN Medical Services with an authorized Medical Status Report requesting an extension.

Rule 31- Discipline Procedure, paragraph J, of the BMWE Agreement ratified on July 1, 2004, provides that employees absent without authority for 3 or more consecutive days be considered resigned from the CN and forfeit all seniority without right of investigation.

The Organization contends that discipline is improper because Claimant had a surgery on December 31, 2010. During his January 18, 2011 follow-up, his doctor filled out a CN Medical

Status Report. On this form under "Expected prognosis-length of time for current impairments," the doctor answered, "3 months." Although three months from that visit would have been April 18, 2011, the Carrier approved the Claimant for his leave through March 31, 2011. Further, the Carrier bulletined Claimant's assignment. The Carrier was on notice that Claimant could not come back to work prior to April 18 by doing simple math. Even if he had been able to return prior to April 18, there would have been no job for him.

The Carrier responds that, regardless of what Claimant's physician wrote in a medical note, the leave of absence ended on March 31. The Carrier clearly notified Claimant of his responsibilities in order to continue his leave. Claimant chose to ignore the requirements of the Carrier's leave policy. Further, even if the Board were to find that the Claimant should be returned to work, he is not entitled to backpay because he was culpable for the failure to get his medical leave extended.

In support of its position, the Organization points to Third Division Award 34448 in which the Carrier physician and the Claimant's personal physician differed on when Claimant was cleared to return to work. Claimant was terminated when he did not return pursuant to the recommendation of the Carrier physician. The Third Division sustained the claim, finding:

Beyond the arguments, certain facts are undisputed. The Claimant supplied documentation from his personal physician that he was under treatment for back pain and that he was unable to work, the Carrier's determination included neither consultation with the Claimant's treating physician nor a request for further documentation, and the Carrier was fully aware of the Claimant's status during the period at issue.

Award 34448 dealt with a Carrier physician's determination whether the Claimant was cleared to return to work versus the diagnosis of Claimant's personal physician. The facts of Award 34448 differ from the instant matter because the instant matter involves whether Claimant sought to extend his medical leave beyond the end date.

In support of its position, the Carrier cites to PLB 2142 Award 2 for the proposition that being absent from work while failing to request a leave of absence means that an employee has abandoned his/her position. The facts of that Award differ from the instant matter because the instant matter deals with a failure to extend an already existing leave of absence when the Claimant could not return to work.

After a review of the record, the Board finds the Carrier improperly terminated Claimant's seniority. The facts demonstrate that Claimant's leave ended on March 31 but that his physician did not clear him for a return to work until mid-April. The return to work date was clear in the physicians report. The return to work date was clear in the leave of absence paperwork. There was an obvious conflict that was not resolved. The Carrier relied upon the date in the leave of absence documentation. Claimant relied on his physician's written diagnosis.

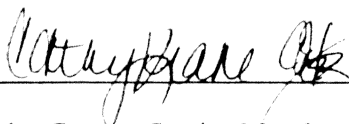
The facts also demonstrate that there could be confusion caused by the Carrier's requirements and the physician's diagnosis and prognosis. Claimant should have resolved that confusion by contacting the Carrier regarding his leave of absence. Given that Claimant shared culpability in the confusion, an award of backpay would not be appropriate.

Award:

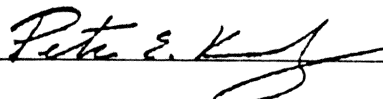
Claim sustained in part. Claimant to be returned to work with seniority unimpaired but with no award of backpay.



Brian Clauss, Chairman



Cathy Cortez, Carrier Member



Peter Kennedy, Organization Member

Signed on June 10, 2013