



Brotherhood of Locomotive Engineers and Trainmen

A Division of the Rail Conference—International Brotherhood of Teamsters

NATIONAL DIVISION

1370 Ontario Street, Mezzanine • Cleveland, Ohio 44113-1702
Phone: (216) 241-2630 • Fax: (216) 241-6516 • www.ble-t.org

DON M. HAHS
National President

February 7, 2008

Re: FMLA Disputes Status

ALL GENERAL CHAIRMEN AND STATE LEGISLATIVE BOARD CHAIRMEN

Dear Sirs and Brothers:

Following the decision of the U.S. Court of Appeals for the Seventh Circuit, efforts were made by the rail unions to collectively resolve the disputes arising out of the application by Conrail, CSXT, Indiana Harbor Belt, NS and UP of their FMLA policies. Efforts were again made after the Supreme Court refused to hear the carriers' appeal and also failed to gain a consensus for a settlement.

To refresh your memory, the litigation resulted in an affirmance of the rail unions' argument that the FMLA provision allowing an employer to require an employee seeking FMLA to first use paid leave is not applicable, as I first wrote you on December 5, 2006, "if the collective bargaining agreement ("CBA") provisions grant the employees the right to determine when, or in what manner, they utilize certain types of paid vacation and personal leave." However, the question of whether the application and interpretation of those specific CBA provisions do prevent the carrier from substituting paid vacation and personal leave for FMLA leave was left to the section 3 procedures of the Railway Labor Act ("RLA") for resolution. You were informed at that time that the judgment did not have an effect upon a carrier's policy during the appeal. Since that judgment was affirmed by the subsequent appeals, any change in the policy will not occur until the issue is favorably resolved for the employees through the RLA procedures. Accordingly, you and the employees can continue to expect the carrier to apply its policy as written.

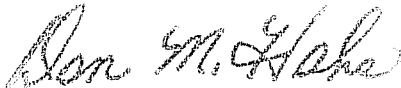
Counsel for the rail unions have continued to maintain lines of communication with the railroads' lawyers. We were advised by counsel this week that the details of setting up arbitration procedures are under active discussion. At the moment, we are unaware of the format that will be agreed upon, if any.

Most of the general chairmen on the carriers involved in the litigation have members' claims, which have been denied by the carrier's highest designated officer. As a result of the agreement between the involved carriers and unions, the limitations period on pending FMLA claims was stopped from running after progressed to the arbitration stage, and, thus, they are ready for submission to arbitration. Union counsel has, therefore, recommended that each of you having claims to progress notify the carrier of his desire to arbitrate and get the cases moving. In order to retain some control as to the forum in which any arbitration is ultimately held, counsel has further advised that these claims should be submitted to a public law board ("PLB"). They may

be added to the docket of an existing or newly created PLB. In this way, the claims can be later transferred to a SBA, if needed.

I know that the National Division has been barraged with calls from FMLA claimants and suspect your offices have had the same phenomena take place. As to the pending claims, you can inform the claimants of the information provided above. Since the carriers can apply their FMLA policy, at least until arbitration is finally completed, I suggest you continue to tell your local chairmen and offended members to file claims under the normal grievance/arbitration provisions of the CBA, and you should progress them in the same manner as you have since the FMLA dispute arose. In addition, I think it would be helpful if this information is provided to your members.

Fraternally yours,



Don M. Hahs
National President

cc: Advisory Board
 D.C. Simmerman, CofS
 C.E. Anderson, DirC
 D. Cook
 H.A. Ross, ILC
 M. Wolly, Counsel, BLET
 G.E. Ross, Mgr- Arb Dept