

CLEVELAND, December 8 — In a decision received this afternoon, a panel of three arbitrators has ruled that the Family and Medical Leave Act (FMLA) policies of the four largest Class I railroads (BNSF, CSXT, NS and UP) violate the industry's national vacation and personal leave agreements. Among the victors are BLET members working for these railroads.

The BLET, along with ten other unions, had challenged carrier policies that required workers to use paid vacation and personal leave when taking FMLA leave in certain circumstances. Nearly two years ago the United States Court of Appeals for the 7th Circuit affirmed a lower court ruling that the law did not permit the carriers to override collective bargaining agreement provisions that gave workers control over scheduling paid leave. When the Supreme Court declined to hear the industry's appeal, the stage was set for the arbitration of the matter.

The arbitration panel held that "the parties' contracts at issue here do, as the District Court posited ... 'grant employees rights in addition to the accrual of vacation and/or personal leave, such as the right to determine when to use their accrued vacation and/or personal leave.' ... In all cases, employers may not unilaterally change scheduled vacations without good cause and appropriate notice. ... [O]nce those days are set, no unilateral employer changes may occur without meeting specified contractual standards. These are not insignificant contractual benefits."

The panel also found that "clear contract language and similar consistent arbitral precedent protect use of personal leave days and individual vacation days from arbitrary or unreasonable unilateral employer action unrelated to operational needs or other contractual standards." The Award states "The carriers' policies requiring employees to substitute paid vacation and/or paid personal leave for unpaid FMLA leave do violate the requirements of the national vacation and/or national personal leave agreements."

According to the Arbitration Agreement, the Award becomes effective on December 16, 2008. On that date, the Agreement provides that "the carriers will immediately discontinue the invalidated provisions of [their] policies." The arbitrators then will consider "the appropriate remedy for employees who were required to use paid leave for FMLA leave in violation of the national vacation and/or national personal leave agreements." Assuming no agreed-upon extensions, initial submissions on that question will be due January 15, 2009, and reply

submissions on January 30. A hearing then would be held by February 13, with a decision to be issued by April 14.

BLET National President Ed Rodzicz congratulated those who made this victory possible, and thanked the BLET membership for their patience. "I want to congratulate, first and foremost, Mike Wolly, Margo Pave and the legal team who put on a great case, and our General Chairmen who persisted in keeping this struggle alive on the property and providing us with the data we needed to win. I also want to express my most sincere thanks to the Brothers and Sisters on BNSF, CSXT, NS, and UP for hanging in there throughout the many years that have passed while we fought to vindicate their vacation and personal leave rights."

The Award is available for download as a PDF from the BLET website at:

<http://www.ble-t.org/pr/pdf/JSCaseNo3750.pdf>

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