



Transportation Division MEMORANDUM

TO: Rail General Chairpersons
FROM: Jeremy R. Ferguson, President - Transportation Division
DATE: June 30, 2020
RE: Furloughed Employees Return to Work Upon Recall

Gentlemen- It was brought to our attention late last week that some carriers are attempting to threaten the loss of RRB unemployment insurance (UI) benefits if furloughed employees do not **immediately** return to work upon recall. The point of contention has apparently been the fact that some carriers were attempting to make immediate recalls, not necessarily in conformity with the CBA's, and in doing so also informed the furloughed members that the RRB would be notified if they failed to report on said date resulting in their RRB UI benefits ceasing from that date forward.

My office reached out to RRB Labor Member John Bragg for clarification and after discussions with he and two of his senior assistants the following was determined:

When you are unemployed and collecting UI benefits, per the statute, you are to be "**available for work**". The statute has no recognition of the CBA so if it is "reasonable" for the RR to expect you to work upon recall, even if it is a notice to report for work the next day and not in compliance with the CBA, then yes the benefits could actually cease at the date one failed to show. That being said, they clarified "reasonable expectations" to include the miles you were expected to travel in order to report, the possible craft they were recalling you for and the possibility of error in the recall notification.

A couple of good examples of qualifying as unreasonable in our discussions are as follows: the crew caller calls your house to notify you of recall tomorrow. You are not home, but your 4-year-old kid answers the phone and the caller says, "tell your dad he has to report to work at his home terminal at 0800 hour tomorrow". Unfortunately for the RR, you have not been properly notified nor can they confirm you have been. Another is they contact you at home, informing that you must attend a recall to duty safety meeting in Chicago tomorrow morning at 08:00. You live 200 miles from Chicago one way, therefore the "reasonable expectation" clause we discussed, which includes both a short time-line and travel distance components that the RRB will take into account.

Now in their example of reasonable: The RR calls your cell phone at 0900 hours and leaves a message, followed by a text message, informing you that you have to report for duty tomorrow at the home terminal in which you were furloughed from at 0800 hours. The RRB would consider this as acceptable in most cases.

A few other issues to be aware of:

Both parties in this have due process under the RRB statute. What this means is that each case, if contested by either party, has to be investigated and can be appealed should they not agree with the results. Members should keep a detailed journal of what transpires each time they are being contacted for recall or held in limbo before going back into a furloughed status. They need to make sure they claim all days they feel they are entitled to, because when the RR attempts to inform the RRB to UI benefits and days have been claimed by the employee, it will trigger this investigation. We all know how the RR's like to recall someone for a job that doesn't exist or lasts for two days then they are furloughed once again. The good news is they can continue to claim each day they do not perform any service. Also, regardless of what the RR reported to RRB, they will be paid benefits unless they exceed \$1,560.00 for the 2-week period.

Additional important information includes; the normal 7 day waiting period was waived by the CARES Act and that will continue through December 2020. Normally when an employee was furloughed in one benefit year and is then recalled in a new benefit year for a period of 14 days of earnings or longer, he would be required to start a new waiting period should he be furloughed once again. I only bring this up because July 1 starts a new benefit year for RRB. This point is moot but if any members ask you can advise them there is no need to worry this year.

In closing, it may be a good idea to put the carriers on notice that if they are going to utilize the "immediate recall with loss of RRB UI benefits" angle, then they must advise the furloughed member and your office what "paid positions" are available, by seniority, to those being recalled. This is of course without prejudice to any objections your office will have if their recall notice is not in conformity with the CBA. I only advise this because if the RRB sees a large number of contested benefit claims that they have to investigate, they may elect to do a full audit on the carrier in question. Your letter putting them on notice will surely help our stated objections to what the carriers are doing.

Kindly advise if you should have any further questions.

Fraternally,

Jeremy R. Ferguson

SMART-TD President

