

BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN

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March 16, 2012

Mr. J. W. Dent, Jr.
BLET General Chairman (UP-SR)
607 W. Harwood Road
Hurst, Texas 76054

Re: FMLA Leave Questions

Dear Sir and Brother:

This responds to your January 16, 2012 letter, received by my office on January 16, 2012, which refers to how the Union Pacific Railroad ("UPRR") calculated B. A. Love's FMLA allotment. Your inquiry was referred to General Counsel Wolly, who provided the following answers and guidelines. While Brother Love asserts that he is entitled to more leave based on his view that UPRR calculations should have been based on a 24-hour day rather than the amount he actually worked, you are correct with your impression that UPRR utilized the proper calculation method in regard to the amount of leave Brother Love was entitled. In 2011, UPRR calculated the amount of leave by taking the number of hours Brother Love worked in 2010 — 1,542 — and dividing that number by the number of days in the year (365), then multiplying that figure by the number of days in twelve weeks (84) to obtain the total number of hours of FMLA leave he would be entitled to for 2011, or

$$\frac{1542}{365} = 4.2246575 \times 84 = 355$$

Moreover, UPRR's calculations appear to be consistent with the U. S. Department of Labor's Regulations.

Additionally, it further appears that UPRR correctly calculated the number of hours that it charged against Brother Love's FMLA allotment when he takes FMLA leave. As stated, when Brother Love takes FMLA leave and is replaced by another engineer, UPRR charges the number of hours that the replacement employee works against Love's FMLA allotment. Brother Love believes that UPRR is only allowed to charge him the number of hours he was off on FMLA leave and, therefore, unavailable for work. For most employees that would be true, because under most circumstances an employer may only charge the actual number of hours that an employee needs for FMLA leave against that employee's FMLA allotment. Unfortunately, for those of us who work in the operating crafts of the railroad industry, the applicable regulations

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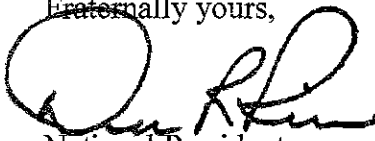
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provide an exception, known as the "impossibility exception," which provides that if it is physically impossible for an employee to begin or end work mid-way through a shift, then the entire period that the employee is forced to be absent is designated as FMLA leave and counts against the employee's entitlement. *See* 29 C.F.R. § 825.205(a)(2). Examples the Regulations provide are for a flight attendant or a railroad conductor who is scheduled to work aboard an airplane or train. So for instance, if Brother Love only needed three hours of FMLA leave as a result of his condition, pursuant to this regulation, because he cannot start his shift three hours late the Carrier is entitled to charge him for the entire period that he is "forced to be absent" from the run. In such a case that entire period is the length of the run that he would have been on had he not taken FMLA leave.

I trust this response provides you with the information needed in order to guide you in answering Brother Love. With warmest personal regards,

Fraternally yours,



National President

cc: E. L. Pruitt, First Vice President
W. C. Walpert, National Secretary-Treasurer
M. D. Twombly, Vice President
J. L. Dayton, General Chairman (UP-WR)
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