

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43660  
Docket No. MW-44627  
19-3-NRAB-00003-180113**

**The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin when award was rendered.**

**(Brotherhood of Maintenance of Way Employees Division -  
(IBT Rail Conference**

**PARTIES TO DISPUTE: (**  
**(CSX Transportation, Inc.**

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

- (1) The carrier violated the Agreement when it improperly terminated the seniority of Mr. J. Myers by letter dated October 5, 2016 (System File D70505916/2016-212501 CSX).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. Myers shall be reinstated to service with seniority and benefits unimpaired, his record cleared of all mention of the matter and he shall be compensated for all loss suffered.”**

**FINDINGS:**

**The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:**

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

**This Division of the Adjustment Board has jurisdiction over the dispute involved herein.**

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

The Claimant suffered an off-duty injury and did not work after June 30, 2016. By letter dated October 5, 2016, the Carrier notified him that his seniority was being forfeited pursuant to Rule 26(b). The pertinent part of the rule reads as follows:

**“(b) Except for sickness or disability, or under circumstances beyond his control, an employee who is absent in excess of fourteen (14) consecutive days without notifying his supervisor or proper carrier official will forfeit all seniority under this Agreement. \* \* \*”**

The record shows that the Claimant was covered by FMLA leave through August 15, 2016. The Carrier contends it received no further medical information from him since the expiration of that leave period. The Claimant and the Organization contend that medical information supporting his continued absence was faxed to the Carrier.

The Carrier has raised a procedural objection to the claim as a threshold matter. It contends that the Statement of Claim fails to comply with the requirements of Circular No. 1 because “No specific rule was cited in the Organization’s request that this case is docketed to [this Board].” The Carrier notes that the Circular requires the following of the Statement of Claim:

**“Under this caption the petitioner or petitioners must clearly state the particular question upon which an award is desired.”**

As published, the Circular does not require that a specific rule be cited in a Statement of Claim. It only requires the question in dispute to be clearly stated. Upon review of the Statement of Claim in this matter, the question is self-evident and clear. That question is whether the Agreement was violated by the Carrier’s action. Accordingly, we find the Statement of Claim satisfies the Circular’s requirement.

Awards No. 27 and 43 of Public Law Board 7104 as well as Third Division Award No. 42771 noted the following about Rule 26(b):

**“Rule 26(b) is clearly and unambiguously self-executing. However, by its explicit terms, it is also self-excusing when sickness, disability, or other circumstances beyond the control of the employee are established**

by the record.”

The record in this dispute establishes that the Claimant’s absence from work was the result of a disability. Therefore, the seniority forfeiture provision of Rule 26(b) was improperly applied to him and did violate the Agreement as alleged.

Accordingly, the Claimant’s seniority must be reinstated unimpaired. When able to satisfy the Carrier’s usual return-to-work requirements, he must be allowed to return to service. The record before us does not establish when, or if, the Claimant recovered from his injury. Therefore, no additional relief is awarded.

**AWARD**

Claim sustained in accordance with the Findings.

**ORDER**

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**By Order of Third Division**

Dated at Chicago, Illinois, this 17th day of May 2019.