

PUBLIC LAW BOARD NO. 2366

AWARD NO. 74

CASE NO. 94

PARTIES TO DISPUTE:

Illinois Central Gulf Railroad

and

Brotherhood of Maintenance of Way Employees

STATEMENT OF CLAIM

1. The record of B. E. Evans was improperly closed out by the Carrier on February 22, 1984, as a consequence of the claimant's involuntary absence from work because of illness. (Organization File S-46-T-84; Carrier File 1644).
2. Claimant B. E. Evans shall be compensated for all wage loss suffered and restored to his former position with seniority and all other rights unimpaired."

OPINION OF THE BOARD

On February 10, 1984, Claimant went to visit a doctor with Carrier's knowledge. He was hospitalized and returned to work with a doctor's statement covering the period of February 10-24, 1984. The Carrier had "closed" the Employee's record on February 22, 1984.

This author has not been reluctant in the past to approve Carrier's actions under Rule 38. But here, we can readily understand how the Employee may have felt that Carrier was aware of his circumstances (see Employee Exhibit A-4).

Certainly the Employee should have notified Carrier of his status, but the failure to notify is not fatal as it was in Docket No. 86 of the Board since there is a realistic "state of mind" defense raised here. We will not, however, require Carrier to pay for wage loss since the defense does not realistically show that Carrier was actually aware of the hospitalization.

FINDINGS

The Board, upon consideration of the entire record and all of the evidence finds:

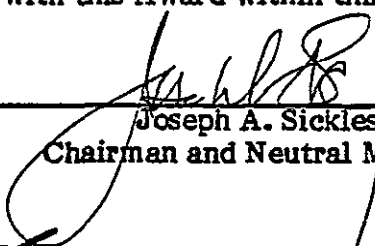
The parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended.

This Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due and proper notice of hearing thereon.

AWARD

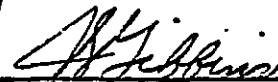
1. Claim is sustained to the extent that Carrier shall restore Claimant to his former position with seniority and other benefits, but without compensation for wage loss.
2. Carrier shall comply with this Award within thirty (30) days of the effective date.



Joseph A. Sickles
Chairman and Neutral Member



H. G. Harper
Organization Member



J. S. Gibbins
Carrier Member

12-17-84

Date