

PUBLIC LAW BOARD 2366

Illinois Central Gulf Railroad	:	
	:	Award No. <del>101</del> 87
v.	:	Docket No. 101
	:	
Brotherhood of Maintenance of	:	
Way Employees	:	

STATEMENT OF CLAIM

1. The company violated the agreement when it considered E. Shegog as having abandoned his position and resigned from the service per Rule 38 after he was absent without permission for eight (8) consecutive days on August 15, 1985.

2. The company should now be required to reinstate Mr. Shegog with all seniority.

OPINION OF THE BOARD

Rule 38 of the Agreement between the parties specifies that an Employee who is absent from assigned position without permission for seven (7) consecutive work days will be considered as having abandoned his position and resigned from the service of the Company.

The Carrier asserts that this Employee did abandon his position since he was absent from work for eight (8) consecutive work days during the period August 6, 1985 to August 15, 1985.

The Carrier argues that the Employee - who had been off work due to a back injury - was released by his doctor to return to work on July 31, 1985, and he did so that day. He finished work on that day but failed to report on August 1 and 2. On August 3, 1985, the Claimant advised his foreman that he desired to lay off on August 5, and stated that he would return to work on August 6. Permission was granted but the Claimant did not return to work on August 6. Moreover, according to the Company, the Claimant failed to report for seven (7) additional consecutive work days through and including August 15, 1985.

Further, according to the Carrier, since the Employee had been absent without permission for eight (8) consecutive work days and no official had received word from the Claimant, the Carrier was required to take action under the self-executing portion of Rule 38. Apparently that notification prompted the Claimant to contact his foreman on August 18, 1985.

The Employee does not contest the fact that he was absent for the period of time in question, however he asserts that he aggravated his previous injury on July 31, 1985, and that he notified his foreman of that fact on August 1. Further, he stated that he would not return to work unless released by his doctor. In essence, the Claimant asserts that the Carrier knew of his whereabouts during the period of time in question and the Carrier was aware of the Claimant's physical condition.

Since Rule 38 is self-executing, certain requirements are imposed on the Carrier when an Employee is absent without permission for seven (7) consecutive work days. Certainly, if a Claimant can demonstrate that he was not absent for the period of time in question or that he had permission to be absent, Rule 38 would not apply. Moreover, we envision circumstances beyond the control of the Employee which might cause the Board to question the applicability of Rule 38. However, it is clearly incumbent upon the Employee to establish the basis for such an exception after the Company has demonstrated the absence with lack of permission. We find no evidence of record to substantiate the Claimant's contentions in this case and we feel that the Company acted within the mandatory obligation imposed upon it by Rule 38 and we will deny the claim.

#### FINDINGS

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

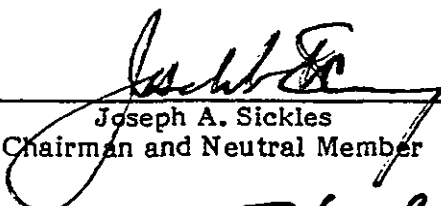
The parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended.


This Board has jurisdiction over the dispute involved herein.

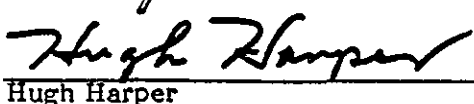
The parties to said dispute were given due and proper notice of hearing thereon.

AWARD

Claim denied.

  
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Joseph A. Sickles  
Chairman and Neutral Member

  
\_\_\_\_\_  
J. S. Gibbins  
Carrier Member

  
\_\_\_\_\_  
Hugh Harper  
Organization Member

  
\_\_\_\_\_  
8/27/86  
Date