

**BEFORE PUBLIC LAW BOARD NO. 6043**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION  
IBT RAIL CONFERENCE  
and  
ILLINOIS CENTRAL RAILROAD COMPANY**

**Case No. 105**

**STATEMENT OF CLAIM:** “Claim of the System Committee of the Brotherhood that:

1. The Carrier’s dismissal of Claimant K.A. Shelley on April 20, 2011, for the alleged violation of Rule 38(a) in connection with his alleged absence without authority for more than seven (7) days beginning on April 6, 2011, is on the basis of unproven charges and was entirely improper, arbitrary, and unwarranted (System File C110501/IC-BMWED-2011-00061).
2. As a consequence of the Carrier’s violation described in Part 1 above, Claimant Shelley is entitled to the remedy prescribed in Rule 33(i) of the Agreement.”

**FINDINGS:**

By notice dated April 20, 2011, the Claimant was informed that because he allegedly had been absent without authority for more than seven days, he was considered as having abandoned his position and resigned from the Carrier’s service. The Organization subsequently filed the instant claim on behalf of the Claimant, challenging the Carrier’s determination. The Carrier denied the claim.

The Organization contends that the instant claim should be sustained in its entirety because the Carrier failed to conduct a fair and impartial hearing before dismissing the Claimant from its service, because the Carrier failed to meet its burden of proving the charges against the Claimant before disciplining him, and because the penalty of dismissal is unwarranted in this case. The Carrier contends that the instant claim should be denied in its entirety because the Organization has failed to meet its burden of proving

that the notice explaining to the Claimant that he had resigned was in violation of the Agreement, because there was no violation of the Agreement in this matter, and because the Claimant is not entitled to any monetary relief.

The parties being unable to resolve their dispute, this matter came before this Board.

This Board has reviewed the record in this case, and we find that the Organization has failed to meet its burden of proof that the Carrier violated Rule 38(a) when it terminated the Claimant for being absent for more than seven days. Therefore, the claim must be denied.

The record is clear that the Claimant's last day on the job was April 5, 2011. The Claimant remained out of service until April 20, 2011. The Claimant did contact the foreman, but he did not obtain permission from supervision to be off work.

Rule 38(a) states the following:

An employee who is absent from his assigned position without permission for seven (7) consecutive work days will be considered as having abandoned his position and resigned from the service.

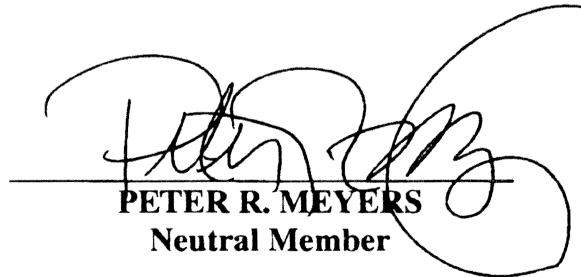
As stated in numerous decisions, Rule 38(a) is a self-executing rule. Although the Claimant stated that he contacted his supervisor and that he had a medical excuse, the Claimant did not bring in any evidence of that communication or medical documentation until after the Claimant was considered to have abandoned his position. It is clear that the Carrier is not obligated to contact the Claimant to find out the reason why he is not coming to work. It was the Claimant who failed to personally obtain permission from supervision for his lengthy absence and, therefore, the self-executing principles of Rule

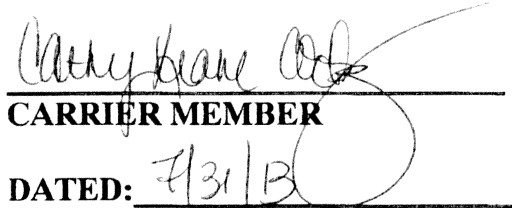
38(a) come into effect.

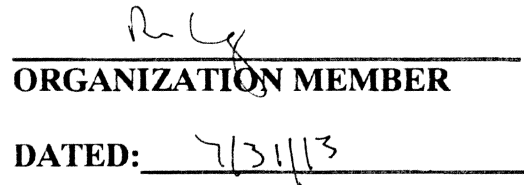
Since the Organization has failed to meet its burden of proof that the Carrier violated the Agreement, the claim must be denied.

**AWARD:**

The claim is denied.

  
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**PETER R. MEYERS**  
Neutral Member

  
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**CARRIER MEMBER**  
**DATED:** 7/31/13

  
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**ORGANIZATION MEMBER**  
**DATED:** 7/31/13