

BEFORE PUBLIC LAW BOARD NO. 6043

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

And

ILLINOIS CENTRAL RAILROAD COMPANY

Case No. 13

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- 1) The Agreement was violated when the Carrier improperly terminated the seniority of Mr. T. W. Carr on June 16, 2000, for allegedly being absent for seven (7) consecutive work days without proper authority. (Carrier's File IC-134-00-36.)
- 2) The Claimant shall now be reinstated with seniority and all other rights unimpaired, compensated for all wage loss suffered, and have his record cleared of this incident.

FINDINGS:

Claimant T. W. Carr was employed by the Carrier as a bridgeman at the time of this claim.

On June 16, 2000, the Carrier notified the Claimant that as a result of his being absent from his assigned position without permission for seven consecutive work days due to an unreported injury that occurred on May 24, 2000, he was considered as having abandoned his position and resigned from the service of the Carrier in accordance with Rule 38.

The Organization thereafter filed a claim on behalf of the Claimant arguing that the Carrier violated Rules 33, 37, and 38 when the Carrier dismissed the Claimant on June 16, 2000. The Organization sought the Claimant's reinstatement, seniority, and payment for any assigned working hours actually lost at the applicable rates while held

out of service, as well as all charges being removed from the Claimant's personnel record. The Carrier denied the claim.

The Carrier argues that the Claimant failed to report his May 24, 2000, injury and failed to explain his unauthorized absences. Therefore, the Carrier maintains that the Claimant was not disciplined at all but was removed from service under the self-executing provisions of Rule 38. The Carrier argues that the Claimant exercised his right to absent himself without authority but, at the same time, relinquished his rights to a hearing. The Carrier also points out that the Claimant was given specific instructions to call his supervisor when he was going to be absent, but he failed to do so. The Carrier further contends that the Claimant was released to return to work on June 7, but the Claimant failed to report, only leaving a voicemail for his supervisor on June 11. The Carrier maintains that the Claimant had no further communication with the Carrier until his removal from service and that the Claimant is not entitled to any monetary relief as he is still considered to be unable to work.

The Organization argues that the Claimant was off from work due to an injury that occurred on May 24, 2000, while on Carrier property and received medical care up through the end of June 2000. The Organization contends that the Carrier was aware of the reason for the Claimant's absence and yet dismissed the Claimant without affording him a fair and impartial hearing. Therefore, the Organization alleges that the Claimant was prejudged. The Organization also argues that the Claimant has documentation in regards to his injury, including a personal injury report dated May 24, 2000, as well as

doctors' excuses confirming his injury. The Organization maintains that the Claimant did not intend to abandon his position or disregard any rules as the Carrier alleges and that the Carrier's imposition of dismissal was unwarranted and excessive.

The parties being unable to resolve the issues, 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 agreement was violated when the Claimant's seniority was terminated on June 16, 2000. The record reveals that although the Claimant sustained an injury in May of 2000, he was released to work on June 7, 2000, after the expiration of his leave of absence. The Claimant did not return to work on June 7, despite the fact that he advised his supervisor that he would return on that date, and only left a voicemail for the supervisor on June 11, 2000. Once the Claimant had been absent without authority for seven consecutive days, he was sent a notice that his seniority was being terminated and he was being considered as having resigned pursuant to Rule 38(a).

Rule 38 (a) states the following:

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

There is no question that this Claimant was absent for seven consecutive work days. He was not off on a leave of absence, and he had failed to obtain permission from his supervisor to be off for the additional days. Although the Claimant left a message on voicemail, he did not provide any evidence of his inability to work and he did not


communicate with anyone from the Carrier after that date. Consequently, the Claimant put himself in violation of Rule 38.

Once this Board had determined that the Claimant has violated Rule 38, the contractual language makes it clear that the Carrier had a right to consider the Claimant as having abandoned his position and resigned from the service. There is no showing that the Carrier's action in this case was an abuse of discretion. The Carrier had a right to know whether or not the Claimant was coming back to work and that information was not given by the Claimant to the Carrier. It is obvious from the record that the Claimant was suffering from medical problems during the month of June, but that information was not given to the Carrier prior to the Carrier invoking Rule 38. The Claimant was not entitled to a hearing since the action taken by the Carrier was not discipline.

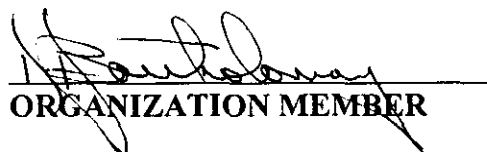
For all of the above reasons, the claim must be denied.

AWARD:


The claim is denied.



PETER R. MEYERS
Neutral Member



ORGANIZATION MEMBER
DATED: 4-26-02



CARRIER MEMBER
DATED: 4/26/02