BEFORE PUBLIC LAW BOARD NO. 6043

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

and

ILLINOIS CENTRAL RAILROAD COMPANY

Case No. 7

STATEMENT OF CLAIM:

1.   The Agreement was violated when the Carrier improperly terminated the seniority of Mr. R. L. Snyder on February 20, 1997 for allegedly being absent for seven consecutive workdays without proper authority (Carrier's File 279 MofW).

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

On February 20, 1997, the Claimant was notified by letter advising him that he had been terminated for allegedly being absent without authority for seven consecutive days.

On April 18, 1997, the Organization filed a claim on behalf of the Claimant contending that the Claimant was unable to work during the period February 4, 1997 through February 20, 1997, due to an injury he sustained to his left elbow. The Carrier denied the claim.

On July 15, 1997, the Organization appealed the Carrier's denial contending that the Claimant verbally advised his supervisor that he was unable to work and that he was going to seek a leave of absence. The Carrier denied the appeal contending that the Claimant never alleged to have had permission to be absent.

The parties being unable to resolve the issue, this matter came before this Board.

This Board has reviewed the record in this case and we find that the Organization has failed to prove that the Carrier improperly terminated the Claimant under the provisions of Rule 38. Therefore, the claim must be denied.

The record reveals that the Claimant completed his tour of duty on February 3, 1997, and did not return to work at any time thereafter. The Carrier sent a letter to the Claimant two weeks later, on February 20, 1997, stating that he had been absent from his position since February 4, 1997, and that "your record has been closed in accordance with Rule 38". Rule 38 was quoted in the letter and it states:

> 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.

On April 18, 1997, the Organization submitted a claim on behalf of the Claimant and that claim included two doctor's statements indicating that the Claimant was unable to work during the two weeks in February of 1997. The Carrier contends, and there is no showing otherwise, that this was the Carrier's first indication that the Claimant was suffering from any type of physical ailment. In that letter, the Organization did not allege that the Claimant had permission to be absent or that he had even informed anybody about his physical ailments.

Finally, in July of 1997, when the Organization appealed the Carrier's denial of the claim, the Organization contended that the Claimant had verbally advised his supervisor that he was unable to work in February and was going to seek a leave of absence. There
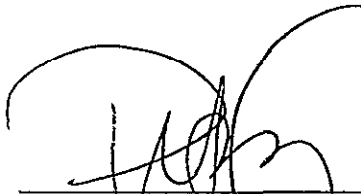
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is no evidence that the Claimant did advise the supervisor of that nor is there any evidence that the Claimant filed for a leave of absence.

It is fundamental that Rule 38 is a self-executing rule. If an employee walks away from his job and does not return and does not notify the Carrier within seven (7) consecutive days, he is considered to have resigned from his position. There have been a number of cases that have been cited by the Carrier which uphold the self-executing nature of Rule 38.

It is heartbreaking to this Board that the Claimant in question had been employed by the Carrier for over 23 years with a very good record. However, it is not our position to exercise leniency in this case. That is up to the Carrier. In this case, we find that the Carrier properly applied its rules and terminated the Claimant's seniority after he was absent without notice or permission for more than seven (7) days. Therefore, the claim must be denied.

AWARD:

Claim denied.

PETER R. MEYERS
Neutral Member

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CARRIER MEMBER

Dated: 3/29/99

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ORGANIZATION MEMBER

Dated: March 29, 1999

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