

BEFORE PUBLIC LAW BOARD NO. 6043

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

Case No. 74

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

1. The Carrier's decision to dismiss Claimant C. Oliphant from service for the alleged violation of Rule 38, paragraph A, in connection with his alleged failure to provide any documentation authorizing his absence from duty is based upon unproven charges and in violation of the Agreement (System File A-09-06-16/IC-BMWED-2009-00026).
2. As a consequence of the violation outlined in Part 1 above, the Claimant shall now receive the remedy prescribed by the parties in Rule 33(i) of the Agreement, effective July 1, 2007."

FINDINGS:

By notice dated May 18, 2009, the Claimant was informed that under Rule 38, paragraph A, of the Agreement, he was considered as having abandoned his assigned position and resigned from service because he had been absent from work without permission for seven days after he allegedly failed to return to duty after being released to return from medical leave to unrestricted service on January 29, 2009. The Organization subsequently filed the instant claim on behalf of the Claimant, challenging the Carrier's decision to dismiss him from service. The Carrier denied the claim.

The Organization contends that the instant claim should be sustained in its entirety because the Carrier was well aware of the Claimant's medical leave and the reason for his continued absence, because the Claimant provided the Carrier with all pertinent medical

documentation relating to his absence, and because the Carrier's Risk Management Officer made arrangements with the Claimant to allow the Claimant to be absent until he was completely recovered from his injury. The Carrier contends that the instant claim should be denied in its entirety because the Organization has failed to meet its burden of proof, because there was no violation of Rule 38, 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 acted improperly when it considered the Claimant to have abandoned his position and resigned from service pursuant to Rule 38 on August 14, 2009. Therefore, the claim must be denied.

The record reveals that the Claimant had been released for unrestricted service effective January 29, 2009, from an injury that had occurred on December 1, 2008.

Although the Claimant states that he was told by a supervisor not to come back to work until he was 100 percent, the record reveals that he had been released to full duty. It was the Claimant's responsibility to obtain whatever medical certification was needed and to apply for a medical leave of absence if he wanted to retain his position as an employee of the Carrier. The Claimant failed to do anything in that regard. On May 18, 2009, the Carrier issued a letter to him stating that in accordance with Rule 38, Paragraph A, since the Claimant had been absent from his position without permission for seven consecutive work days, he was being considered as having abandoned his position and

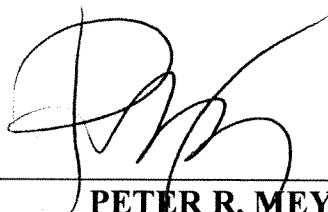
having resigned from the service.

The Organization's case consists of alleged oral statements made to the Claimant that were made by risk management representatives who stated that they would take care of it all and that the Claimant did not have to do anything. The alleged statements were not corroborated by anyone. The rule at issue is clear and it states that it is the Claimant's responsibility to maintain his position with the Carrier. That means that once the Claimant had been released to return to unrestricted service as the Claimant was on January 29, 2009, he either had to come to work or take some type of positive action to preserve his position. The Claimant failed to do that. Those alleged oral statements made to the Claimant are simply not enough to excuse the Claimant's failure to take responsibility for his own situation.

This Board cannot find that the Carrier acted in violation of any rules when it terminated the Claimant's employment pursuant to Rule 39, Paragraph A. This is not a discipline case. This is a rules case and the Organization has failed to meet its burden of proof.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member


CARRIER MEMBER

DATED: March 31, 2011


ORGANIZATION MEMBER

DATED: March 31, 2011