

BEFORE PUBLIC LAW BOARD NO. 6043

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

ILLINOIS CENTRAL RAILROAD COMPANY

Case No. 8

STATEMENT OF CLAIM:

1. The Agreement was violated when the Carrier improperly terminated the seniority of Mr. G. Taylor, Jr., on April 1, 1997 for allegedly being absent for seven consecutive workdays without proper authority (Carrier's File 283 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 26, 1997, the Claimant received a one-month leave of absence after he sustained an injury to his back. Claimant returned to work on March 12, 1997, worked three hours, and left complaining of pain. Subsequently, the Carrier informed the Claimant by letter that by returning to work on March 12, 1997, he broke his leave of absence. Therefore, he needed to fill out the appropriate forms if he required another leave of absence.

On April 1, 1997, the Carrier informed the Claimant by letter advising him that his employment with the Carrier had been terminated under the provisions of Rule 38.

The Organization filed a claim on behalf of the Claimant contending that the Carrier was aware of the Claimant's injury and that the Carrier did grant the Claimant a

leave of absence until March 26, 1997. The Organization also argued that the Claimant had visited the doctor on March 31, 1997, and the doctor had excused him from work for April 1 and 2 with a possible return on April 3, 1997.

The Carrier denied the claim contending that the Organization failed to prove that the Claimant had permission to be absent from work. The Organization appealed the Carrier's decision and once again the Carrier denied the claim.

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 Claimant was granted a one-month leave of absence on February 26, 1997. That leave of absence was in effect until March 26, 1997. In the letter dated February 26, 1997, from the Engineering Superintendent, the Claimant was told,

"Per your request, and your release from Company doctor for injury to your back, you are hereby granted a personal illness leave of absence from February 26, 1997, to March 26, 1997".

Claimant was told in that letter that his seniority rights would be protected during his absence.

The record reveals that before the month was over, the Claimant returned to work for approximately three hours on March 12, 1997. He apparently found that he was unable to work because he was still in too much pain. He left work that day before the end of the shift.

The Carrier then notified the Claimant on March 19, 1997, that because he had come into work for three hours on March 12, 1997, he had broken his leave of absence

and he would have to obtain another leave of absence. The Carrier contends it heard nothing from the Claimant and, on April 1, 1997, the Claimant was sent a letter advising him that he was considered by the Carrier to have resigned from the service of the Carrier under the provisions of Rule 38.

Rule 38 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 service.

This Board recognizes the importance of Rule 38 and its self-executing nature. The Carrier has a legitimate right to terminate the seniority of an employee if that employee walks away from his job and does not return for seven (7) consecutive work days without permission.

However, the record in this case reveals that the Claimant did receive a one-month leave of absence from February 26, 1997, until March 26, 1997. The Carrier gave the Claimant permission to be off for that full 30-day period. On April 1, 1997, which is less than seven days from the end of the Claimant's leave of absence on March 26, 1997, the Claimant was sent a letter that since his last day worked was March 12, 1997, he was considered to have resigned from the service of the Carrier.

Nowhere in the Carrier's letter dated February 26, 1997, which put the Claimant on a leave of absence for the one-month period, does it state that if the Claimant attempts to return to work early and is unable to do so, his leave of absence will end. Even in its letter dated March 19, 1997, the Carrier does not state anything about the leave of

absence coming to an end because the Claimant returned to work on March 12, 1997, and worked for three hours but went home because he was in pain. The letter merely states, "If you need to have another leave of absence, please have your doctor fill out Form 3529 and return it to us, as soon as possible so that we may process a leave for you". The Carrier goes on to state:

Failure to do this could result in forfeiture of all seniority and employment relationships and will effect your medical insurance.

There is nothing stated in that letter dated March 19, 1997, that the Claimant's attempt to return to work early on March 12, 1997, terminated his leave of absence.

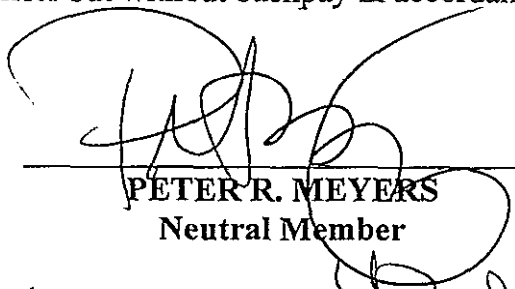
Consequently, we must find that the Claimant was still on an approved leave of absence through March 26, 1997. Since the Carrier then sent the Claimant his "resignation" letter on April 1, 1997, before the Claimant was actually absent from his assigned position without permission for seven (7) consecutive work days, that letter was an invalid letter. We find that the Claimant was not absent from his assigned position without permission for a period of seven (7) consecutive work days before the April 1 letter was sent. We find that the Carrier had no basis to terminate the seniority of this employee who had 34 years of service with the Carrier.

Once we have determined that the Carrier had no right to terminate the seniority of the Claimant, we next turn our attention to the question of backpay. The Claimant in this case was suffering from severe back pain when he attempted to work on March 12, 1997. Since there is nothing in this record that indicates that the Claimant was ever capable of returning to work and had totally recovered from his injuries, this Board cannot find any

basis upon which to award backpay to the Claimant. Therefore, he will be reinstated, but without backpay.

AWARD:

Claim sustained in part and denied in part. Claimant shall be reinstated to employment with the Carrier but without backpay in accordance with the above findings.



PETER R. MEYERS
Neutral Member



CARRIER MEMBER

Dated: 3/29/99



ORGANIZATION MEMBER

Dated: March 29, 1999