

BEFORE PUBLIC LAW BOARD NO. 6915

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES DIVISION
and
CN-WISCONSIN CENTRAL RAILROAD**

Case No. 10

STATEMENT OF CLAIM:

Appeal of the dismissal of Claimant A.S. Thomas for allegedly failing to comply with Rules B, H, and I, and for allegedly being absent from work for three (3) consecutive days.

FINDINGS:

By letter dated February 15, 2006, the Claimant was directed to attend a formal investigation and hearing "for the purpose of ascertaining the facts and to determine whether or not you violated company rules, instructions or policies when you allegedly failed to return to examining physician for final clearance; failed to provide an updated medical status report as instructed by CN Medical Services and absent without authority." The investigation was conducted, as scheduled, on March 1, 2006. By letter dated March 20, 2006, the Claimant was notified that as a result of the investigation, he had been found guilty of violating the Carrier's Operating Rules and General Rules B, H, and I, and that he had forfeited his seniority by being absent from work for three consecutive workdays. This letter further informed the Claimant that he was being dismissed from the Carrier's service. The Organization thereafter filed a claim on the Claimant's behalf, challenging the Carrier's decision to discharge the Claimant. The Carrier denied the claim.

The Carrier initially contends that the record contains credible testimony and

evidence proving that the Claimant violated the cited rules. The Carrier asserts that the record also proves that the Claimant forfeited his seniority, as set forth in Rule 31, Paragraph J, of the parties' collective bargaining agreement, when he was absent from work for three consecutive workdays.

The Carrier argues that in light of the incident at issue, the proven rule violations, and the Claimant's past discipline record, the discipline at issue was appropriate.

The Carrier ultimately contends that the instant claim should be denied in its entirety.

The Organization initially contends that all of the telephone contact between the Carrier and the Claimant were initiated by the Claimant. The Organization argues that although the Carrier sent a certified letter to the Claimant, it never was received. Moreover, the Carrier did not bother to telephone the Claimant until January 19, and this call was in response to the Claimant's own call asking for further direction. The Organization points out that the Claimant had phoned the Carrier, and that someone named "Ann" confirmed that the Carrier had received the fax sent from the Claimant's doctor on January 13th; "Ann" further told the Claimant that someone would be contacting him.

The Organization maintains that with regard to the alleged violation of Rule B, Reporting and Complying with Instructions, the Claimant complied with all instructions that he received to the best of his ability, and he repeatedly exhibited initiative. The Claimant called for a return-to-work physical, and his repeated attempts at progress and to reach Holman were ignored.

As for the alleged violation of Rule H, Furnishing Information and Conduct, the Organization acknowledges that there may have been some miscommunication about the Claimant's truck repair. The Organization insists, however, that Brandon expressed no urgency, and there was no willful neglect or intent to avoid service. The Organization then contends that with regard to the alleged violation of Rule I, Reporting or Absence, the only time and place designated was the original return-to-work physical appointment. The Organization emphasizes that the Claimant punctually complied with this appointment. The Organization additionally asserts that there is no basis for accusing the Claimant of being absent from work for three consecutive days because the Claimant never was directed to return to work.

The Organization ultimately contends that the instant claim should be sustained in its entirety, and the Claimant should be immediately reinstated with full seniority and all other rights unimpaired, and with full back pay.

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

This Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of failing to comply with the Carrier's request to maintain an updated medical status and for being absent without authority. The Claimant repeatedly failed to report to the Carrier and comply with its instructions so that he could return to work. As a result, the Claimant forfeited his seniority and was considered AWOL.

The record makes it clear that the Claimant knew what he was supposed to do and

had no authorization for his continued absence.

Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary, or capricious.

The record is clear that the Claimant failed to comply with Rules B, H, and I, because he was absent from work for three consecutive days. In addition, the Claimant failed to comply with the Carrier's continued requests that he report to the Carrier's office.

This Board cannot find that the Carrier's actions in dismissing the Claimant were unreasonable, arbitrary, or capricious. Therefore, the claim must be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member

ORGANIZATION MEMBER

DATED: 4-30-07



CARRIER MEMBER

DATED: 4-30-07