

PUBLIC LAW BOARD NO. 7104

AWARD NO. 27

CASE NO. 27

PARTIES TO
THE DISPUTE:

Brotherhood of Maintenance of Way Employees
Division - IBT Rail Conference

vs.

CSX Transportation, Inc.

ARBITRATOR: Gerald E. Wallin

DECISION: Claim sustained in accordance with the Findings.

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

1. The dismissal (seniority forfeiture) of Welder Keith J. Duling for violation of Rule 26(b) in connection with failing to report for duty on Force 5G11 beginning Tuesday, April 8, 2008 and continuing is unjust, unwarranted and in violation of the Agreement (System File D26345108/2008-016517).
2. As a consequence of the violation in Part 1 above, we request that Mr. Duling be granted remedy in accordance with Rule 25 of the Agreement."

FINDINGS OF THE BOARD:

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.

The basic facts are free of significant conflict. Claimant went absent from work without permission beginning April 8, 2008. He did not notify any Carrier official. Rule 26(b) provides as follows:

(b) Except for sickness or disability, or under circumstances beyond his control, an employee who is absent in excess of fourteen (14) consecutive days without notifying his supervisor or proper carrier official will forfeit all seniority under this Agreement. * * *

The rule also requires the Carrier to send notification of proposed forfeiture by certified mail

with a copy to the applicable General Chairman. The rule goes on to provide for a procedure to appeal from the forfeiture pursuant to Rule 25, Section 3 if made within 30 days.

The Organization did appeal well within the appeal time limit. The appeal letter asserted that claimant's inability to work was due to medical reasons and went on to request a hearing conference pursuant to Rule 25, Section 3. That conference was conducted on July 1-2, 2008. It is clear from the Carrier's denial letter dated July 29, 2008, that a letter from claimant's treating doctor was provided to the Carrier. That letter was dated June 10, 2008 and included an explanation of claimant's diagnosis and treatment. Significantly, the letter explained how claimant's condition accounted for his failure to report for work and his failure to notify the Carrier about his condition.

There is no proper medical evidence in the record to challenge the content of the letter from claimant's doctor.

The Carrier cited the findings of Award No. 25 of Public Law Board 6564 in support of its position. However, our review of that award establishes that it was based on significantly different facts. In that case, the employee became absent on July 15, 2002. Nothing was heard from him or on his behalf until the following January. No appeal was undertaken within the time limit. Moreover, it appears from the award text that no explanation for the failure to notify the Carrier was ever provided. Accordingly, the award has essentially no relevance to the instant dispute.

Rule 26(b) is clearly and unambiguously self-executing. However, by its explicit terms, it is also self-excusing when sickness, disability, or other circumstances beyond the control of the employee are established by the record. On the record before us, there is medical evidence to establish the excuse. Moreover, there is no conflicting medical evidence to create a dispute about the cause of claimant's absence or the characteristics of his condition that explained his failure to notify the Carrier. Accordingly, the forfeiture of his seniority has not been properly justified and must be set aside.

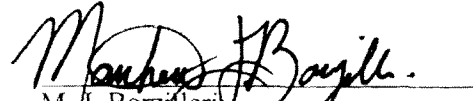
Notwithstanding the foregoing, it is clear from the two letters from claimant's doctor that are in the parties' submissions that claimant was not able to work due to his condition. While the doctor expressed hope that effective treatment would allow claimant to return to work, nothing in the record before us establishes that claimant regained fitness for duty as of a particular date. Therefore, while claimant must be offered the opportunity to be reinstated to his former employment status without undue delay, he must satisfy the Carrier's usual return-to-work requirements before being reinstated. In addition, he is not entitled to any back pay or other economic benefits attributed to the period of time he has been out of service. The Carrier is directed to offer the reinstatement opportunity within thirty (30) days of the date shown below.

AWARD:

The Claim is sustained in accordance with the Findings.


Gerald E. Wallin, Esq., Chairman


T. W. Kreke,
Organization Member


M. J. Borzilleri,
Carrier Member

Date: May 28, 2020