

**PUBLIC LAW BOARD NO. 7104**

**AWARD NO. 43**

**CASE NO. 43**

**PARTIES TO  
THE DISPUTE:**

**Brotherhood of Maintenance of Way Employes  
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 termination) of Claimant Andre D. Robinson for violation of Rule 26(b) of the Agreement is unjust, unwarranted and in violation of the Agreement (System File D70827008/2008-016518).
2. As a consequence of Part 1 above, we request that Mr. Robinson shall have the letter dated April 28, 2008 removed from his personal file and his name placed back on all appropriate seniority rosters with the correct seniority dates and he shall be compensated with all straight time and overtime he would ordinarily be entitled to receive beginning May 1, 2008 including all fringe benefits he may be entitled to receive from April 14, 2008 and continuing until the violation stops."

**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 straightforward. Claimant did not report for work beginning April 14, 2008. On April 28, 2008, his supervisor mailed a letter to him pursuant to Rule 26(b), which provides, in part, 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 by letter dated May 8, 2008. The appeal, however, did not assert any reasons to contend that Rule 26(b) should not have been invoked. The appeal merely requested a conference to discuss the matter.

The parties did discuss the matter on February 3, 2009. By letter dated February 26, 2009, the Carrier's HDLRO denied the appeal. The denial letter noted that no documentation or other evidence had been provided to support the appeal. This denial letter started the nine-month time limit running in which the Organization could advance the matter to this Board pursuant to Rule 24(c).


More than seven months later, the Organization wrote again on October 8, 2009. This letter enclosed telephone records, statements signed by claimant, and medical reports. The letter explained how claimant had notified his supervisors that he would miss work by leaving a number of telephone messages to that effect. The dates, times, and numbers called by claimant were supported by copies of his telephone bills. Among other facts, one medical report associated with a non-work-related back injury noted lifting restrictions and prohibited machinery operation and/or strenuous activity. The reports related to the initial 14-day absence period that triggered the Carrier's application of Rule 26(b) and for some time thereafter.


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 or when the record establishes notification of a period of absence. On the record before us, there is medical evidence to establish the excuse. In addition, there is evidence to establish notification. Moreover, that evidence was properly supplied to the record during the time period when the record remained open for the addition of evidence. Accordingly, the forfeiture of claimant's seniority has not been properly justified and must be set aside.

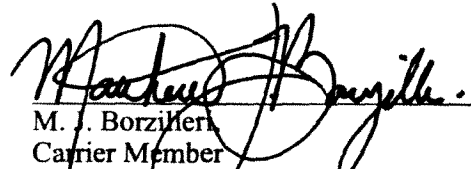
The Carrier is directed to offer claimant reinstatement to his former employment status, with seniority and the other attributes of that status unimpaired, but without back pay or other economic benefits attributed to the period of time he has been out of service. While claimant must be offered the opportunity 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. 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: 10/5/2010