

AWARD NO. 132  
Case No. 132

Organization File No. D70146011  
Carrier File No. 2011-088449

**PUBLIC LAW BOARD NO. 7163**

PARTIES     ) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION,  
              ) INTERNATIONAL BROTHERHOOD OF TEAMSTERS  
TO            )  
              )  
DISPUTE     ) CSX TRANSPORTATION, INC.

**STATEMENT OF CLAIM:**

1.     The Carrier's dismissal of Claimant G. Spears for his alleged failure to report for duty on his position as a trackman on Force 6XC8 beginning on January 3, 2011 and continuing was entirely improper, arbitrary and unwarranted.
2.     As a consequence of the violation referred to in Part 1 above, Claimant Spears shall have the charge expunged from his record, be reinstated to service with all seniority rights restored and unimpaired and receive compensation for all straight time and overtime hours he would have received if not for the Carrier's improper dismissal beginning on February 2, 2011 and continuing.

**FINDINGS:**

The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated March 20, 2008, this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

The facts in this case are not in dispute. Claimant was first hired by the Carrier as a Basic Trackman on July 30, 2001. He was then furloughed at the end of the year and remained in furloughed status, with retention of seniority, for nine years. Although he had not been recalled from

furlough, Claimant bid on a Trackman position on Production Gang 6XC8 on December 12, 2010. Two days later, a bulletin was issued awarding him this position effective January 3, 2011. Claimant apparently was unaware of the fact that he had been awarded the position inasmuch as a copy of the bulletin was not sent to him. Consequently, he did not take up service on the position on January 3.

On January 15, 2011, Claimant was contacted by another employee and informed that the supervisor of the Production Gang had mentioned that he had not heard from Claimant since the effective date of the bulletin. Claimant, the following day, called the timekeeper of the Production Gang to discuss the situation. Claimant was apparently told to contact someone in the Human Resources Department. Claimant says his efforts to do so during the next several days were unsuccessful. After obtaining a different phone number, Claimant reached somebody in Human Resources, who, according to the Organization, told him that the Carrier was late in sending him a copy of the bulletin, but it was his responsibility to determine if he had been awarded the position. A copy of the award bulletin was sent to Claimant on January 14, 2011 and received by him on January 18, 2011.

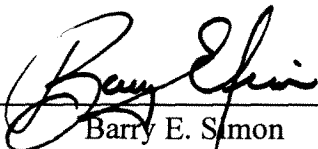
By letter dated February 2, 2011, Claimant was informed that his seniority was being terminated pursuant to Rule 26 of the Agreement due to his failure to report for duty. Rule 26(b) provides:


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 employee will be notified by certified mail, return receipt requested, with copy to the General Chairman advising them of such forfeiture of seniority. The employee or his representative may appeal from such action to the carrier's Highest Designated Labor Relations Officer within thirty (30) days under Rule 25, Section 3.


This case presents a unique set of circumstances that call for a unique resolution. Claimant had worked for the Carrier for only five months before he began a nine-year furlough. After such a lengthy absence from the Carrier's workforce, it is reasonable that Claimant might not have a clear understanding of the process that would get him back to work. Nevertheless, he should have contacted a Carrier official in the beginning rather than rely upon information he was getting from another employee. The Carrier also was remiss in not sending him a copy of the award bulletin, which contained instructions on reporting for the first day of work, in a timely manner.

From a technical standpoint, the Carrier's action was in accordance with the provisions of Rule 26(b) inasmuch as Claimant had not reported for his assignment for more than fourteen consecutive days. Despite this, the Carrier must act reasonably in the exercise of its right to apply this Rule. Both sides share responsibility for the forfeiture of Claimant's seniority. Under the circumstances, therefore, we will direct that Claimant's seniority status be restored, but we will deny that portion of the claim seeking compensation for time lost.

AWARD: Claim sustained in accordance with the above Findings.

  
Barry E. Simon  
Chairman and Neutral Member

  
Peter E. Kennedy  
Employee Member

  
Robert Paszta  
Carrier Member

Dated: January 7, 2013  
Arlington Heights, Illinois