

PUBLIC LAW BOARD NO. 2142

Award No. 9

Docket No. MW-1158

Case No. 25

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute Illinois Central Gulf Railroad

Statement

of Claim: Carrier unfairly and unjustly dismissed Section Laborer A. T. Johnson from Carrier's service as of July 30, 1977. Claimant Section Laborer Johnson shall be restored to service with all rights unimpaired, and that he shall be paid 8 hours for each work day that he has missed, plus overtime that his gang worked while he has been off work.

Findings: The Board, after hearing upon the whole record and evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated January 23, 1978, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

Claimant: Trackman requested and received permission to lay off early on Tuesday, July 19, 1977, as well as Wednesday, July 20, 1977. Claimant failed to report back to work Thursday and Friday, July 21st and 22nd. The following work week, July 25 through July 29, saw Claimant still missing. The Division Engineer, as a consequence of Claimant being absent without permission for seven (7) consecutive work days wrote Claimant on July 30, 1977 and advised him that he had failed to comply with Agreement Rule 39 and that his service with the company was being

terminated. Agreement Rule 39 (Unauthorized Absence) effective April 1, 1976 reads:

"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 the service."

Claimant offered three "reasons" for his non-compliance with Rule 39. First, that he was treated at the out-patient clinic of the Missouri Pacific Employee's Hospital July 22 through August 1, 1977 when he was released to work therefrom; second, that he did not have his foreman's telephone number and lastly that he allegedly sent word by three different men that he was off due to injury.

The Board finds that Claimant failed to meet his obligations under revised Rule 39 quoted herein above. Claimant offered excuses and not reasons for his absences. The medical evidence offered did not support or prove that Claimant had been thereby prevented from contacting his supervisor as to his absence.

Claimant's obligation to protect his assignment included his ascertaining the means by which he will notify his supervisor when cause therefor arises of his inability to protect such assignment. Having knowledge of essential Carrier telephone numbers in order to fulfill his obligation to so notify was part and parcel of such obligation. Claimant, according to the record, made no effort to obtain any such numbers.

The obligation to notify Carrier or to request permission to be off is personal. It is not transferable. Even if one were to accept

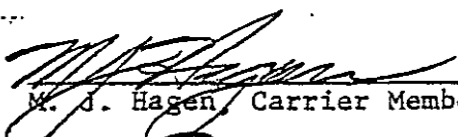
this excuse the failure of the method of communication utilized to work rests solely with Claimant.


Claimant having had experience under old Rule 39 was thoroughly conversant with his obligations and what Carrier expected of him. The Board concludes that Claimant failed to request permission to be absent and that having been absent for seven consecutive days the Company, pursuant to Rule 39, properly considered him resigned from the service.

This claim will be denied.

Award: Claim denied.


A. J. Cunningham, Employee Member


M. J. Hagen, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member