

PUBLIC LAW BOARD NO. 2366

DOCKET NO. 46

AWARD NO. 34

PARTIES TO DISPUTE:

Illinois Central Gulf Railroad

and

Brotherhood of Maintenance of Way Employees

STATEMENT OF CLAIM

- "(1) The record of D. W. Payne was improperly closed by the Carrier on February 11, 1981, as a consequence of Claimant's involuntary absence from work because of an on-duty injury. (Case No. 1439 MofW)
- (2) The closing of the Claimant's record shall be rescinded; the Claimant shall be returned to service with all rights intact and with pay for all time lost since the date he was released by his doctor for full time service."

OPINION OF BOARD

On August 7, 1980, the Claimant claimed that he sustained an injury, however he worked for a certain period of time on light duty. But, on September 3 of 1980, he provided a statement from his doctor stating that the Employee should refrain from working until further notice.

The record indicates that the Carrier questioned the sufficiency of that medical certification, and requested further information. But, in any event, on October 16, 1980, the Carrier granted the Employee a leave of absence from September 3, 1980 to November 1, 1980.

The third paragraph of that letter stated that if further leave was desired, it was to be handled before the expiration of the leave in question, and failure to do so, providing medical explanation, would result in "...forfeiture of all seniority and employment relationship."

The September 3 - November 1, 1980 leave of absence expired with no action by the Employee; however on November 20, 1980, the Claimant submitted an additional note from his doctor which stated that he should refrain from working for the next 90 days. The Carrier re-issued a leave of absence from November 3, 1980 to January 30, 1981, and again the Employee was advised, in the third paragraph of the letter granting the leave, that if further leave was desired the matter had to be handled with the Carrier prior to expiration of the leave then being granted, and again the Employee was notified that a failure to comply with that requirement would result in a forfeiture of seniority and the employment relationship.

The Employee took no action to request an extension, nor did he return to work on or about January 31, 1981. As the result, on February 11, 1981, the Company notified the Claimant that he was in violation of Rule 38, and that the Carrier considered him as having abandoned his position and having resigned from the railroad. Rule 38 states that an employee who is absent from his position without permission for 7 consecutive work days will be considered as having abandoned his position and resigned from the service of the Carrier.

The Employees note that the Claimant was absent because of an "on-duty" injury, and they argue that when the Carrier unilaterally extended the Claimant's leave of absence it waived its right to take action under Rule 38. The Claimant relies upon Third Division Award 22984, which sustained a claim when an employee was absent from work due to an injury which occurred while he was on duty.

We do not feel that the cited Award controls this dispute. Here, the Employee was granted a leave of absence which specifically advised him of procedures to be followed if an extension was necessary. Although he apparently failed to follow that designated procedure at the expiration of the initial period of the leave, the Carrier, when it granted the second 90 day leave, again advised the Employee in specific terms of the procedure to be followed should an additional extension be required. Thus, while it may be that the Employee was absent due to a job-related injury, the Carrier stated certain reasonable procedures to be followed if an extension was requested, and admittedly the Claimant failed to comply with that reasonable procedure.

We are not unmindful of the fact that the Carrier unilaterally granted an extension of the leave covering the period of November 1 through January 31, and it is not inconceivable that in a given case such a unilateral action might be the basis for some contention that the Employee was misled and reasonably felt that no action was needed by him regardless of the specific written direction. But here, we have searched the

record in vain to find any remote suggestion that the Employee had been misled. Rather, the Claimant relied upon the fact that his injury was "job related." The mere fact that the injury may have been so related does not, in our view, relieve him of the clear instructions given to him in two leaves of absence, and under the circumstances we do not feel that it was improper for the Carrier to invoke Rule 38.

FINDINGS

The Board, upon consideration of the entire record and all of the evidence finds:

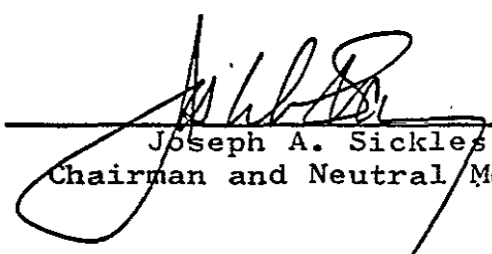
The parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended.

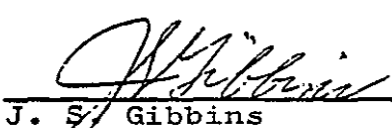
This Board has jurisdiction over the dispute involved herein.


The parties to said dispute were given due and proper notice of hearing thereon.

AWARD

Claim denied.


Joseph A. Sickles
Chairman and Neutral Member


J. S. Gibbins
Carrier Member


Hugh G. Harper
Organization Member

Nov. 17, 1982
DATE