

PUBLIC LAW BOARD NO. 2366

AWARD NO. 59

DOCKET NO. 73

ORGANIZATION FILE MW-15-T-83

CARRIER FILE 1559

PARTIES TO DISPUTE:

Brotherhood of Maintenance
of Way Employees

and

Illinois Central Gulf Railroad

STATEMENT OF CLAIM

- "(1) The Carrier removing Claimant R. T. Sudduth's name from the appropriate seniority roster and in effect dismissing him from service was without just and sufficient cause.
- (2) Claimant R. T. Sudduth shall be reinstated with seniority and all other rights unimpaired and compensated for all wage loss suffered."

OPINION OF THE BOARD

The Claimant was "released" by his doctor on October 12, 1982. However, he did not return to work, nor did he contact his supervisor concerning any permission to be absent. As a result, the Carrier removed the Employee's name from the seniority roster, in accordance with Rule 38 of the Agreement, which provides that 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.

The Claimant has asserted that he was still undergoing discomfort and was under a doctor's care, and, therefore, he did not abandon his position. Nonetheless, under a Rules provision, such as Rule 38, certain obligations fall upon the employee if he has to continue to be absent from employment, especially after he has been released to return to work.

Rule 38 is a self-executing seniority forfeiture clause. We noted in Award No. 6 of this Board that the language is mandatory, and that the Carrier has no alternative but to consider the individual as having abandoned his position and resigned from service under certain circumstances. Further, in that Award, we noted that if the Carrier had failed to take such action, it would subject itself to claims from other employees.

Under this record, the Carrier had no alternative but to remove the Claimant from the seniority roster.

FINDINGS

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

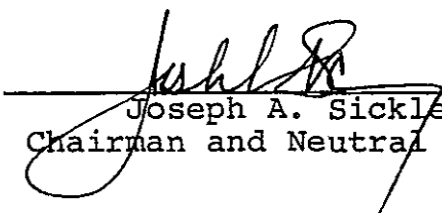
The parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended.

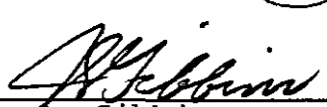
This Board has jurisdiction over the dispute involved herein.

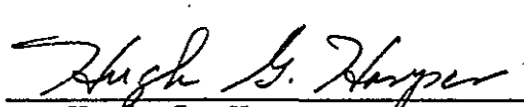
The parties to said dispute were given due and proper notice of hearing thereon.

AWARD

Claim denied.


Joseph A. Sickles
Chairman and Neutral Member


J. S. Gibbins
Carrier Member


Hugh G. Harper
Organization Member

1/23/84
Date