

PUBLIC LAW BOARD NO. 2366

Docket No. 18
Award No. 6
Case No. MW-1260
File: Mo-25-T-78

PARTIES TO DISPUTE:

Illinois Central Gulf Railroad

and

Brotherhood of Maintenance of Way Employees

STATEMENT OF CLAIM

"(1) The record of G. E. Spearman was improperly closed out by the Carrier on August 25, 1978 as a consequence of the Claimant's involuntary absence from work because of a personal injury.

(2) Claimant G. E. Spearman shall be compensated for all time lost, and restored to his former position with seniority and all other rights unimpaired."

OPINION OF BOARD

The Claimant was absent from duty commencing July 3, 1978. The Carrier notified the Employee, on August 25, 1978, that inasmuch as he was absent without requesting a leave of absence, he was considered as having abandoned his position and having resigned from the service of the Company.

The Organization asserts that the Claimant's absence was a result of an injury suffered while in the Carrier's service - which fact was known to the Carrier - and that injury culminated in back surgery on September 4, 1978.

In support of its position, the Claimant notes that he was injured while on duty on November 18, 1977, and was absent from duty on several occasions thereafter; which clearly establishes the Carrier's knowledge of the circumstances.

To the contrary, the Carrier asserts that from July 3, 1978 the Employee was absent without permission and he made no attempt to contact any Foreman or Supervisor to request any permission to be absent from work or to arrange for a leave of absence.

Thus, the Carrier insists that it had absolutely no alternative but to consider the Employee as having resigned under the rule that states:

"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."

In addition, it denies that it was aware that the absence in question generated from an injury and, even if it did have certain knowledge in that regard, it was still incumbent upon the Employee to request permission because the prior rule, which permitted deviation in the event an absence was due to physical incapacity, was superseded by the above cited rule.

To emphasize its contention that it was not aware that the Employee was suffering from a job related injury on a continuing basis, the Carrier points out that it met with the Employee on June 29, 1978 to discuss the Claimant's absentee record and, Carrier asserts, during that meeting there was no mention made of any injury which resulted in the absences from service.

On the next day, the Claimant personally delivered to the office of the Division Engineer a private medical certification dated June 26, 1978, stating that the Employee was healthy and that he could return to unrestricted work.

This Board would not deny that in an individual case a specific showing of knowledge on the part of the Carrier in the context of all of the facts and circumstances might negate the necessity of making a direct request for permission to be absent. But certainly, we can find no such indication in this record. Not only does the Employee fail to present anything which substantiates his factual assertions, but to the contrary, there are matters of record which suggest a contrary result. Thus, we find that the Employee was absent without permission for a seven (7) consecutive work day period and, under the mandatory language of the cited rule, the Carrier had no alternative but to consider the individual as having abandoned his position and resigned from service. In fact, had the Carrier failed to take such action, it would subject itself to claims from other employees.

FINDINGS

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

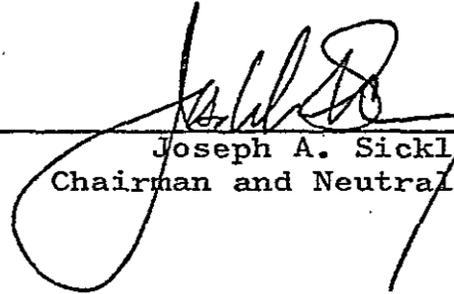
The parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended.

This Board has jurisdiction over the dispute involved herein.

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

AWARD

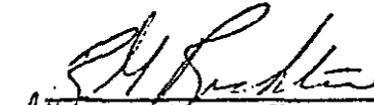
Claim denied.



Joseph A. Sickles
Chairman and Neutral Member



Hugh G. Harper
Organization Member



Michael J. Hagan
Carrier Member

3/10/80
DATE