

**PUBLIC LAW BOARD NO. 6043**

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**BROTHERHOOD OF MAINTENANCE OF WAY  
EMPLOYES DIVISION - IBT RAIL CONFERENCE**

**Case No.: 414**

**Award No.: 414**

**vs.**

**ILLINOIS CENTRAL RAILROAD COMPANY**

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**STATEMENT OF CLAIM:** “Claim of the System Committee of the Brotherhood that:

1. The Carrier’s dismissal of Mr. B. Buttrey, on August 21, 2018, for the alleged violation of Rule 38(a) in connection with his alleged absence without authority for more than seven (7) days beginning on July 17, 2018 was entirely improper, arbitrary and unwarranted (System File 18 10 21 (021)/IC-BMWED-2018-00044 ICE).
2. As a consequence of the violation referred to in Part 1 above, Claimant B. Buttrey must be returned to service and made whole for all wage loss suffered.”

**FINDINGS:**

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier or employee within the meaning of the Railway Labor Act as approved June 21, 1934. Public Law Board 6043 has jurisdiction over the parties and the dispute involved herein.

At the time of his dismissal from the Carrier’s service, Claimant had more than 12 years of service with the Carrier and was regularly assigned as a B&S Welder.

On July 11, 2018, Claimant relapsed from his prior treatment for alcoholism. Claimant called the AMC on July 12, to notify the Carrier that he intended to seek help. He failed to report off work on July 13. On July 17, he called the AMC to be sure he was reporting his absence correctly and realized that he should have called off on July 13.

Claimant requested to be placed on medical leave and leave pursuant to the Family and Medical Leave Act (“FMLA”) and the Carrier provided a packet of forms to be completed by Claimant and his medical provider. Claimant never returned any of the forms. The Carrier sent three reminder notices, but the forms were not returned.

On July 18, 2018, while on pending medical leave, Claimant signed a document indicating that he would report to jail on August 3, 2018. After this date on July 22, 2018, he signed a waiver for a 30-day record suspension for a previous infraction. On August 3, 2018, Claimant notified his supervisor that he was reporting to jail, asking when his return to work date was from his suspension.

Claimant was released from jail on August 16. He emailed his supervisor on August 23, 2018, to confirm that his return to work date was September 5, 2018. On August 21, 2018, the Carrier notified Claimant that pursuant to Rule 38, he was considered to have resigned his position as a welder as he had been absent from his assignment since July 17, 2018, without permission or substantiation.

Rule 38 provides:

Employees who are absent from their assigned position for seven (7) consecutive work days, will be considered as having abandoned their position and resigned from the service.

The Organization contends that it has provided substantial evidence showing that Claimant was not a true walkaway employee and never intended to abandon his career. The Organization contends that Claimant made several attempts to communicate with the Carrier regarding his return-to-work date. The Organization contends that Claimant mistakenly believed that his July 22 discipline required him to serve an actual, not record, suspension. Thus, the Organization contends, Claimant believed he was not required to call off work, as the Carrier had suspended him. The Organization contends that prior to his dismissal, Claimant was undergoing treatment for alcoholism and was seeking help.

The Organization concedes that Claimant did not return the necessary paperwork for a medical leave of absence, but contends that he believed it was unnecessary due to his suspension. The Organization contends that the Third Division has determined that self-executing provisions should not be applied to employees that do not abandon their jobs.

The Organization contends that the Carrier's decision to dismiss Claimant from its service in this case was excessive and in violation of the Agreement based on the totality of the circumstances involved in this dispute.

The Carrier contends that Claimant was absent from service on and after July 13, 2018, and while he requested a leave of absence, he never returned the paperwork to justify one. Thus, the Carrier contends that it rightly considered him to have abandoned his position. The Carrier contends that Claimant's self-serving statement that he thought he was serving an actual, rather than record, suspension is not supported by the record. The Carrier contends that Claimant's statements are not credible in light of the documentary evidence.

The Carrier contends that Claimant failed to report for work between July 13 and August 22, he was not on a leave of absence, and he was in jail. Claimant was unable to work from August 3, 2018 through approximately August 20, 2018. The Carrier contends that

pursuant to the self-executing Rule 38, Claimant was considered to have resigned his position.

The Board has carefully reviewed the record and finds that the Organization has failed to prove a rules violation. It is undisputed that Claimant was absent from duty for more than seven consecutive days and thus, was properly considered to have resigned from his position. The Organization argues that there is no evidence that Claimant intended to abandon his position, but the evidence is undisputed that Claimant failed to follow through to secure a medical leave of absence and was in jail on days he was expected to report for service.

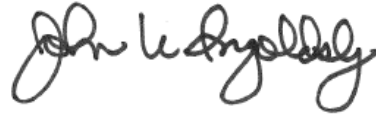
Our review of the record in this case leads us to conclude that it supports the Carrier's determination that the self-executing rule properly applied to this case and Claimant was rightly considered to have abandoned his job.

**AWARD**

Claim denied.

  
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Kathryn A. VanDagens, Neutral Member

  
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Ross Glorioso, Organization Member

  
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John Ingoldsby, Carrier Member

Dated: August 12, 2021