

BEFORE PUBLIC LAW BOARD NO. 6043

**INTERNATIONAL BROTHERHOOD OF TEAMSTERS
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES DIVISION
and
CANADIAN NATIONAL RAILWAY
ILLINOIS CENTRAL RAILROAD**

Case No. 46

STATEMENT OF CLAIM:

Claim that Bridge Supervisor C.L. Franklin "... be returned to service and made whole as per Rule 33(i)" account Carrier's alleged violation of Rule 7(c), PROMOTION AND DEMOTION, when Mr. Franklin was allegedly improperly terminated with Illinois Central Railroad Company on May 30, 2006 when his employment as a management employee of Illinois Central Railroad was terminated for cause. Organization File Number: S C070706.0 CN-IC Franklin (Dismissal). Carrier File Number IC 134 106 27.

FINDINGS:

By letter dated May 30, 2006, the Claimant was notified that his employment with the Carrier was terminated, effective immediately. The letter further informed the Claimant that under Rule 7(c), this dismissal resulted in the automatic forfeiture of the Claimant's seniority and other rights. The Organization thereafter filed a claim on behalf of the Claimant, challenging the Carrier's decision to discharge him. The Carrier denied the claim.

The Carrier initially contends that the Claimant was dismissed from his employment as a result of a culmination of events. These events included inappropriately representing the Carrier to an FRA official, making unauthorized building renovations, and engaging in an altercation that resulted in the Claimant's arrest. The Carrier emphasizes that each of these events represents sufficient cause, on its own, for the

Claimant's dismissal.

The Carrier asserts that Rule 7(c) is not misleading, and the Carrier maintains that it is interpreting this Rule properly. Rule 7(c) clearly states that when an employee who occupies an official or excepted position is dismissed for cause, that employee "automatically forfeits all seniority and rights to return" to Agreement positions. The Carrier argues that the Claimant was dismissed for cause, so the Carrier is not obligated to allow the Claimant to exercise a seniority move.

The Carrier insists that it has not violated the Agreement, and it ultimately contends that the instant claim should be denied in its entirety.

The Organization initially contends that the Carrier violated the parties' Agreement when it failed and refused to allow the Claimant to exercise his seniority to an Agreement-covered position on May 30, 2006. The Organization asserts that Rule 7(c) clearly and unambiguously provides that when an employee is dismissed for cause, that employee automatically forfeits all seniority and rights to return to an Agreement-covered position. The Organization argues that in the Claimant's case, the Carrier has not shown "cause" that would automatically result in the Claimant's restriction to return to an Agreement position.

The Organization points out that it is not arguing that the Carrier does not have the right to remove an employee from an exempt position. The Organization emphasizes that under Rule 7(c), such a removal must be for "cause." Absent such a showing, the employee has the right to exercise his seniority to an Agreement-covered position to which his seniority entitles him. The Organization maintains that under the

circumstances, the Carrier's failure to allow the Claimant to exercise his seniority to a position under the Agreement constitutes a clear violation of Rule 7(c).

The Organization asserts that the Carrier simply stated that the Claimant was dismissed for cause, citing the multiple contributing events, but the Carrier failed to provide any information or documentation as to what the "cause" was. The Organization contends that the Carrier failed to demonstrate what the reasons were for the Claimant's dismissal. The Organization argues that it appears that the Carrier believes it has fulfilled its obligation under Rule 7(c) simply by using the word "cause." The Organization maintains that because the last sentence of Rule 7(c) allows the Organization to file a grievance in this type of situation, the Carrier is required to show "cause" and give the reasons that it believes justifies the decision to dismiss the Claimant. The Organization emphasizes that the Carrier has failed to do so in this case, so the instant claim must be allowed.

The Organization further argues that by failing to show "cause," the Carrier disciplined the Claimant without benefit of a fair and impartial hearing, as set forth in Rule 33. The Organization asserts that that Carrier also failed to follow any of the time limits set forth in that Rule. The Organization maintains that the Claimant therefore is entitled to the remedy prescribed in Rule 33 (i).

The Organization goes on to point out that the Carrier also has violated Rule 34, which specifies that should any such grievance be disallowed, the Carrier shall give notice, in writing, of the reasons for such disallowance. The Organization insists that the Carrier has failed to give any reason as to why it dismissed the Claimant, so the instant

claim should be allowed as presented.

The Organization ultimately contends that the instant claim should be sustained in its entirety.

The parties being unable to resolve their dispute, this matter came before this Board.

This Board has reviewed the record in this case, and we find that the Carrier properly dismissed the Claimant from his employment on May 30, 2006. The record reveals that the Claimant engaged in several different behaviors, all of which individually would serve as cause for his dismissal. The Claimant, who was acting as a management employee, inappropriately represented the Carrier to an FRA official, made unauthorized building renovations, and engaged in an altercation which resulted in his arrest.

The record does reveal that the Claimant hired on as an hourly employee and a member of the Organization. However, in 2003, he moved into a supervisory position.

Rule 7(c) states in part:

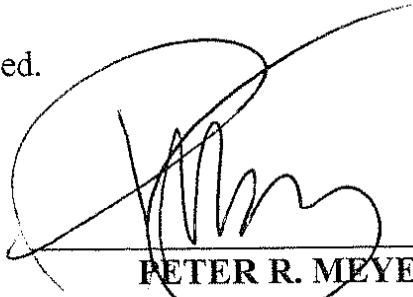
When an employee, who occupies an official or excepted position, is dismissed for cause, said employee forfeits all seniority and right to return to positions covered by this Agreement.

Consequently, the record is clear that once the Claimant is terminated for cause from his supervisory position, he is unable to return to his bargaining unit position within the Organization. The record reveals that the Carrier met the requirements of Rule 7(c) and, therefore, the Carrier is not required to take the Claimant back into its employ in a bargaining unit position.

For all of the above reasons, the claim must be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member


ORGANIZATION MEMBER
CARRIER MEMBER

DATED: 4-1-08

DATED: April 1, 2008