

BEFORE PUBLIC LAW BOARD NO. 6043

**INTERNATIONAL BROTHERHOOD OF TEAMSTERS
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES DIVISION
And
ILLINOIS CENTRAL RAILROAD**

Case No. 48

STATEMENT OF CLAIM:

Claim of Welder Helper W.S. Cox, that he "... be allowed to return to work immediately upon his doctor's release and the dismissal letter of November 7, 2006, rescinded" after the Carrier allegedly violated Rule 33 DISCIPLINE and Rule 39(a) UNAUTHORIZED ABSENCES, when on December 27, 2006 the Carrier issued a letter to Mr. Cox, advising that per Rule 38, Mr. Cox was considered having abandoned his position and resigned from service as a result of his absence from his assigned position without permission for seven consecutive workdays. Organization File Number: C 12 20 06 H CN (Cox - 7-Day Letter). Carrier File Number IC 134 107 1.

FINDINGS:

By notice dated November 7, 2006, the Claimant was informed that effective that date, he was considered as resigned from the Carrier's service under Rule 38(a) on grounds that the Claimant had been absent from his assigned position without permission for seven consecutive workdays. 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 issued a Medical Leave of Absence by Medical Services, which extended from February 16 to April 30, 2006. The Carrier asserts that if an extension of this leave was required, the Claimant was required to provide Medical Services with the appropriate form and his most current medical

information. The Carrier emphasizes that only Medical Services can give and extend an employee's Medical Leave of Absence. The Carrier points out that the Claimant had from May 1 to November 7, 2006, to get his Medical Leave current with the Carrier. The Carrier maintains that all employees have access to the Carrier's Medical Leave of Absence Policy.

The Carrier argues that the Organization is incorrect in its assertion that the Carrier failed to provide the Claimant with a Medical Status Report. The Carrier points out that it is not the supervisor's responsibility to provide the employee with any forms. Instead, it is the employee's responsibility to secure the necessary forms and submit them to the supervisor.

The Carrier asserts that the Organization also is incorrect in arguing that the Claimant's Medical Leave of Absence did not require the forms and reports that now are needed for an extension. Contrary to the Organization's position, the Carrier emphasizes that there are no references to "verbatim" approvals in the Medical Leave of Absence Policy and Procedure. Moreover, this Policy clearly outlines the procedures for obtaining a medical leave of absence.

As for the Organization's assertion that the Carrier violated Rule 33, the Carrier emphasizes that the Organization has not indicated how the Carrier violated this rule. The Carrier points out that Rule 33 covers discipline, but the Carrier insists that the Claimant was not disciplined in this matter.

The Carrier maintains that the Claimant was considered to have abandoned his position and resigned from service because he was absent from his assigned position

without permission for seven consecutive workdays. The Carrier argues that if the Claimant had an excuse that he wanted the Carrier to consider, then it was the Claimant's responsibility to take the necessary steps to keep the Carrier informed of his situation. The Carrier emphasizes that the Claimant made no effort to keep his status known, and the Carrier properly considered him as resigned under Rule 38.

The Carrier ultimately contends that the instant claim is without merit, and it should be denied in its entirety.

The Organization initially contends that the Claimant had permission from his immediate supervisor to absent himself from work in the situation at issue. The Organization asserts that the Carrier also dismissed the Claimant from service without a fair and impartial hearing. The Organization argues that if the Carrier had investigated this matter properly, it would have found that the Claimant kept his new supervisor informed, by telephone, of his current progress while under his doctor's care. The Organization maintains that this completely negated the dismissal letter.

The Organization emphasizes that the Claimant's supervisor failed to provide the Claimant with a Medical Status Report form, as required by the Carrier's Medical Leave of Absence Policy. The Organization therefore contends that Medical Services could not have issued a Medical Leave of Absence from February 16 to April 30, 2006, nor could the Claimant's supervisor complete a Request for Medical Leave of Absence form and supply a copy to the Claimant, also as required by the Medical Leave of Absence Policy.

The Organization insists that because the Claimant never was supplied the proper forms in the first place, he could not have applied for nor extended his Medical Leave of

Absence. The Organization asserts that the Claimant's Medical Leave of Absence apparently was granted verbatim and did not require the now-necessary forms and reports needed for an extension. The Organization insists that if the Carrier requires that a Request for Medical Leave form and a Medical Status Report form are to be faxed and e-mailed back and forth between the parties for an extension of a Medical Leave of Absence, the Carrier first must demonstrate that such forms had been provided to the Claimant in the first place. The Organization maintains that the Carrier failed to provide these forms.

The Organization insists that the Carrier acted arbitrarily and erroneously in considering the Claimant as having abandoned his position and resigned from the Carrier's service. 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 Organization has failed to meet its burden of proof that the Claimant did not act in violation of Rule 38 when he was off work for the period April 30, 2006, through November 7, 2006, without filing the appropriate documentation with the Carrier.

The record reveals that this Claimant suffered an injury on January 6, 2006. He applied for a medical leave of absence, and it was granted to cover the period from February 12 through April 30, 2006. The Claimant's leave expired on April 30, 2006, and the record demonstrates that the Claimant failed to let the Carrier know in proper

fashion as to what his health status was. Although the Claimant argues that he did not have the appropriate forms to fill out, it is clear that when an employee is off on a leave, it is the employee's responsibility to keep the Carrier advised as to his medical status.

Rule 38(a) of the Agreement between the Carrier and the Claimant's Organization states the following:

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.

This Claimant was off from April 30, 2006, when his leave expired, until November 7, 2006. That is clearly more than seven days.

This Board firmly rejects the Organization's position that this was a disciplinary action and that the Carrier acted in violation of the disciplinary rule. The Claimant was charged with the self-executing Rule 38(a), and it is the Organization's responsibility to come forward with any evidence, if it exists, that the Claimant was not guilty of violating that rule. The fact that the Claimant did not have the proper forms is simply not enough to meet the burden of proof.

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

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member



ORGANIZATION MEMBER

DATED: 5/5/08



CARRIER MEMBER

DATED: May 5, 2008