

AWARD NO. 163
Case No. 163

Organization File No. D70800312
Carrier File No. 2012-116061

PUBLIC LAW BOARD NO. 7163

PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION,
TO) INTERNATIONAL BROTHERHOOD OF TEAMSTERS
DISPUTE) CSX TRANSPORTATION, INC.

STATEMENT OF CLAIM:

1. The Carrier's dismissal of Claimant C. Swortfiguer for his alleged failure to report for duty on his position beginning on December 6, 2011 and continuing was baseless, inappropriate, arbitrary and constituted a violation of the Agreement.
2. As a consequence of the violation referred to in Part 1 above, Claimant C. Swortfiguer shall have the dismissal expunged from his record, be reinstated to service with all seniority rights restored and unimpaired and receive any and all compensation and income lost, including all straight time and overtime hours he would have received if not for the Carrier's improper dismissal beginning on January 9, 2012 and continuing.

FINDINGS:

The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated March 20, 2008, this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

Claimant was first hired by the Carrier on July 16, 2007. During the 2011 production season, Claimant was regularly assigned to a System Production Gang position until it was abolished on November 18, 2011. Claimant then took his accrued vacation through the Thanksgiving holiday.

After the holiday, the Roadmaster at Laurens, South Carolina informed Claimant of a vacancy on an assistant foreman position. Although the position required a valid Commercial Driver's License (CDL), which Claimant did not possess, the Roadmaster informed him he could still take the job. Claimant agreed to place himself on the position, telling the Roadmaster that he would work it until he was awarded an SPG position when they were bulletined for the next season. Claimant began work on the assistant foreman position on November 28, 2011. On December 6, 2011, however, Claimant stopped coming to work. After he had not worked the job for two weeks, Claimant was sent a letter informing him that he was being removed from the seniority roster in accordance with Rule 26(b) of the Agreement. The Organization has filed this claim protesting the Carrier's action.

Rule 26 - Absent Without Permission states as follows:

- (a) An employee unable to report for work for any reason must notify his supervisor as soon as possible.
- (b) Except for sickness or disability, or under circumstances beyond his control, an employee who is absent in excess of fourteen (14) consecutive days without notifying his supervisor or proper carrier official will forfeit all seniority under this Agreement. The employee will be notified by certified mail, return receipt requested, with a copy to the General Chairman advising them of such forfeiture of seniority. The employee or his representative may appeal from such action to the carrier's Highest Designated Labor Relations Officer within thirty (30) days under Rule 25, Section 3.
- (c) It is understood this rule shall not apply to an employee involved in a medical dispute with the carrier's physician and the employee's physician, regarding his ability to work in connection with.

The record clearly establishes that Claimant did not report for work starting on December 6, 2011. On December 20, 2011, which was the fifteenth calendar day he had not been at work, he was issued the letter informing him that his seniority had been terminated. Further, the Organization does not deny that Claimant was not told by the Roadmaster, or anyone else in authority, that he no longer

needed to report for duty on the assistant foreman position. These facts are sufficient to support the Carrier's assertion that Claimant's termination was in accordance with Rule 26(b).

The Organization argues Claimant was not really assigned to the assistant foreman position and, therefore, Rule 26(b) does not apply. First, it contends he was not qualified for the position because he did not have a CDL, which was one of the requirements for the job. It further asserts he agreed to take the job with the understanding it would only be until he was awarded a job on the System Production Gang. According to the Organization, he had been awarded a position on the rubber tire crane. We do not find these to be valid arguments.

While it true Claimant was not fully qualified for the assistant foreman position, it is evident there were no other employees who met all of the qualifications and were interested in the position. In the absence of a fully qualified applicant, the Carrier was free to appoint Claimant despite his lack of the CDL. Once he had been placed on the position, the only way he could vacate it would be through abolishment, displacement by a qualified employee or by his securing another position through the bidding process. He could not disqualify himself because of his lack of the license.

Although the Carrier acknowledges that Claimant filed bids for SPG positions, the record does not indicate when he was actually awarded the job on the rubber tire crane. Regardless of when the award bulletin was issued, it is unrefuted that the position would not have required Claimant to report for work prior to December 20, 2011. In fact, in his April 24, 2013 letter confirming the conference on this claim, the Vice Chairman wrote:


After a careful review of the fact, indicate that the Carrier abolished the Claimant's position he held on November 18, 2011. The Claimant then observed the remainder of his vacation pay he had qualified to receive under the Agreement which ended the week of Thanksgiving 2011. The Claimant had a conversation with supervisor McWhite on Sunday, November

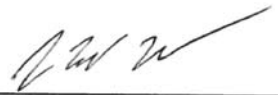
27, 2011 who according to Claimant Swortfiguer, ws the Roadmaster Trainee in charge at Laurens, SC. During the conversation the Claimant and supervisor McWhite agreed the Claimant would fill a vacant Assistant Track Foreman vacancy located at Laurens, SC beginning Monday, November 28, 2012 until the position was awarded to the senior *qualified* bidder, and or until such time as Claimant Swortfiguer was awarded a position and required to report to a 2012 System Production Gang position; he had been awarded such position. (emphasis in original)

From this, the Board concludes the Organization understands that it was not merely the fact that Claimant might have been awarded the position on the SPG that would have allowed him to leave the assistant foreman position. Rather, as the Vice Chairman states, he must also be required to report to the position. That requirement did not arise prior to December 20, 2011.

In light of the record before us, we find that Claimant's termination was in accordance with Rule 26(b) of the Agreement. The claim, therefore, is without merit.

AWARD: Claim denied.


Barry E. Simon
Chairman and Neutral Member


Andrew Mulford
Employee Member


Rob Miller
Carrier Member

Dated: April 2, 2015
Arlington Heights, Illinois