

AWARD NO. 191  
Case No. 191

Organization File No.  
Carrier File No. 2013-143864

**PUBLIC LAW BOARD NO. 7163**

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

STATEMENT OF CLAIM:

1. The Agreement was violated when, by letter dated April 15, 2013, the Carrier terminated the seniority of Claimant R. Kuhn via the provisions of Rule 26(b).
2. As a consequence of the violation referred to in Part 1 above, Claimant R. Kuhn shall now have his seniority reinstated to all applicable seniority rosters and he shall be made whole for all economic, credits and benefits and losses related to the termination of his seniority.

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.

Certain material facts in this case are undisputed. On February 5, 2013 Division Engineer - Great Lakes T. S. Thoburn issued Claimant a letter advising him that, due to an off-duty DUI/DWI citation by the State of New York, he was determined to be unable to perform service for the Carrier until released by the Medical Department to return to active duty. Furthermore, Claimant was

directed to contact an EAP Manager within five business days of receipt of the letter for the purpose of being evaluated to determine his fitness for service. He was told that his failure to contact the EAP Manager within that time frame could result in disciplinary action. Finally, the letter advised him to arrange to protect his seniority upon his release to service by the Medical Department.

Claimant contacted the EAP Manager in a timely manner and began a treatment program. On March 14, 2013, however, Claimant left the program. According to the Carrier, Claimant's decision to leave the program was against the recommendation of the EAP counselor and resulted in the closure of his case due to non-compliance with EAP objectives. Thereafter, Claimant made no contact with his supervisor to request authority to be absent. On April 15, 2013 Staff Engineer M. J. Cameron sent Claimant a letter advising him he had forfeited his seniority. The letter stated, in pertinent part, as follows:

This letter is notification of your forfeiture of seniority, in accordance with the provisions of Rule 26 of the Agreement between CSX Transportation, Inc., and its Maintenance of Way Employees represented by the Brotherhood of Maintenance of Way Employees, effective June 1, 1999. Our records show that you entered into the Employee Assistance Program on March 7, 2013 and left against the recommendations of EAP on March 14, 2013. You failed to report for duty on your position as Foreman on Force 5Q27 beginning March 14, 2013 and continuing and failed to contact your supervisor.

As a result of your failure to protect your assignment or contact your supervisor, and in accordance with the provisions of the effective Agreement, you are being removed from all appropriate seniority rosters effective immediately.

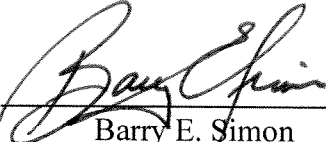
Rule 26 (b) states, "Except for sickness or disability, or under circumstances beyond his control, an employee who is absent in excess of fourteen (14) consecutive days without notifying his supervisor or proper carrier official will forfeit all seniority under this Agreement. The employee will be notified by certified mail, return receipt requested, with 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."

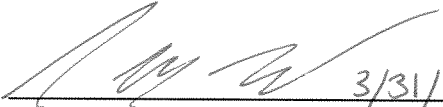
The Board finds that Claimant was absent from work in excess of fourteen consecutive days and had not contacted his supervisor about his absence during this time period. When Claimant voluntarily left the service provider against medical advice on March 14, 2013, he was dropped from the Employee Assistance Program and was no longer under its protection. He then became absent without permission. It is not sufficient that Claimant might have later been in contact with the EAP counselor, as the Organization contends. The Rule is specific that the employee must contact his supervisor when he is in an absent status.

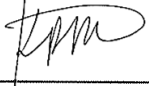
Under the terms of Rule 26(b), Claimant's forfeiture of seniority was automatic. There is no argument that the Carrier properly complied with the notification procedures. We do not find evidence in the record that the exception for "sickness, disability, or circumstances beyond his control" would apply in this case. While the Carrier removed Claimant from service until he was released by the Medical Director, we cannot infer that he suffered from any sickness or disability. The requirement to be cleared by the Medical Director was to ensure that he did not have a sickness or disability before returning to work. This was all based upon Claimant being cited for a DUI/DWI offense. It would be improper to presume from this citation that Claimant is either an alcoholic or habitual drug user.

While the Board finds it commendable that Claimant entered and completed a rehabilitation program subsequent to the Carrier's action in this case, the fact remains that Claimant placed himself in an absent without permission status when he left the EAP. Rule 26(b) then required him to take action to protect his seniority. He must accept the consequences of his decision. The Carrier's action was not in violation of the Agreement.

AWARD: Claim denied.

  
Barry E. Simon  
Chairman and Neutral Member

  
Andrew Mulford  
Employee Member - I Dissent

  
Rob Miller  
Carrier Member

Dated: February 23, 2016  
Arlington Heights, Illinois