

Public Law Board 7163

**PLB 7163
Award No. 246**

Parties to Dispute:

**Brotherhood of Maintenance of Way Employees Division
IBT Rail Conference**

And

CSX Transportation, Inc.

Statement of Claim:

"Claim of the System Committee of the Brotherhood that:

- 1. The Agreement was violated when, by letter dated December 11, 2013, the Carrier terminated the seniority of Mr. J. Harrison via the provisions of Rule 26(b) (System File D70175214/2014-157307 CSX).*
- 2. As a consequence of the violation referred to in Part 1, above, Claimant J. Harrison shall now have his seniority reinstated to all applicable seniority rosters and he shall be made whole for the lost work opportunity, credited for vacation and retirement and compensated for all other losses related to the termination of his seniority."*

Findings:

This dispute arises from the contradictory interpretations of **Rule 26(b)**. **Rule 26(b)** reads in pertinent part:

"(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 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."

On November 20, 2013, Claimant Mr. J. Harrison was advised he would be granted a twelve (12) weeks leave of absence under the Family Medical Leave Act (FMLA) – conditioned upon receipt of Certification of Physician or Practitioner.

On December 6, 2013, Carrier informed Claimant that his request for twelve (12) weeks FMLA had been granted, but the dates would run from November 20, 2013 through May 20, 2014. Carrier counseled Claimant that the consequences of any misuse of his FMLA would subject him to discipline under the applicable disciplinary policy.


On December 11, 2013, Carrier informed Claimant that he had been absent without authority in excess of fourteen (14) consecutive days without notifying his supervisor or proper Carrier Official; and in accordance with Rule 26(b), his seniority was automatically terminated.


The Organization appealed citing both the Claimant was not absent without authority, and, alternatively that the exception in Rule 26(b) for absences greater than 14 days for "sickness or disability, or circumstances beyond the employee's control" applied.

Upon full consideration of all the evidence and arguments advanced by both parties, under the particular facts of this case, the Board finds that the Carrier failed to show that Rule 26(b) required the forfeiture of Claimant's seniority.

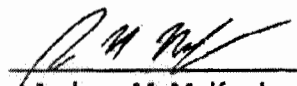
Award:

Claim is sustained as presented by the Organization.


J. E. (Jim) Nash, Arbitrator, Inc.
Chairman and Neutral Member


Katrina Donovan
CSX Transportation, Inc.

Carrier Member


Andrew M. Mulford
BMW

Organization Member

Dated this 23 day of December 2017