

**PUBLIC LAW BOARD NO. 7163
CASE No. 339**

**BMW FILE No. D70186416
LCAT No. 2016-211678**

Brotherhood of Maintenance of Way Employees Division)	
Of the International Brotherhood of Teamsters)	
)	
Vs.)	Parties to Dispute
)	
CSX Transportation, Inc.)	

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- 1. The Carrier violated the Agreement when, by phone call on August 30, 2016, it informed Mr. D. Bowman that his seniority had been forfeited under the auspicious of Rule 26(b) (System File D70186416/2016-211678 CSX).**
- 2. As a consequence of the violation referred to in Part 1 above, Claimant D. Bowman shall now be ‘... made whole for this lost (sic) of work opportunity, straight time and overtime and be credited for vacation and retirement purposes.’ (Emphasis in original) (Employee’s Exhibit ‘A-1’).”**

FINDINGS:

The Board, upon the whole record and all the evidence, finds that the carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934. The Board has jurisdiction over the dispute involved herein. The Parties to said dispute were given due notice of hearing thereon.

The Claimant suffered an on-duty injury on October 20, 2014 and did not report for duty beginning on October 21, 2014. On October 21, 2014, the Claimant’s treating physician submitted on the CSX Medical Department form a notation that the Claimant was available to work on October 23, 2014; the Claimant did not return to work. On October 28, 2014, the Claimant spoke with the CSX Nurse Medical Manager and provided her a new address. This was his preferred mailing address for any correspondence she needed to send him. The nurse mailed several

correspondences to this address, which the Claimant acknowledged he received. The Claimant, however, did not update his address on file with CSX, and his address remained listed at the post office box address that was previously on file.

On May 25, 2016, the Carrier mailed a standardized company form, the Medical Letter of Discovery, via certified mail which instructed the Claimant to have his physician provide the CSX Medical Questionnaire within ten (10) days of receipt; the letter was sent to the post office box address that was previously on file. The Claimant did not receive the Medical Letter of Discovery. On July 20, 2016, the Carrier mailed the Claimant a Seniority Forfeiture letter which read in pertinent part: "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 have not reported for duty since October 20, 2014. Also, you have failed to respond to the Medical Letter of Discovery dated May 25, 2016. As a result of your absence, and in accordance with the provisions of the effective Agreement, you are being removed from all effective seniority rosters immediately..."

The Seniority Forfeiture Letter was mailed via certified mail to the Claimant at his post office box address within the Carrier's system, and sent to the General Chairman via electronic mail.

On September 28, 2016, the Organization filed an appeal to the Carrier's Highest Designated Officer pursuant to Rule 26, protesting the Claimant's forfeiture of seniority. The Organization requested the appeal to be listed for conference by letter dated February 8, 2017. After said conference, the Highest Designated Officer denied the appeal on September 21, 2017. After on property handling between the parties, the case was mutually listed on PLB 7163 for review.

The Board has reviewed the record developed by the parties during their handling of the claim on the property and considered evidence related to the following to make its determination of this claim:

- 1) Did the Claimant establish by substantial evidence that the Carrier violated the controlling agreement?

- 2) If so, what should the remedy be in the case?

PERTINENT PROVISIONS OF THE AGREEMENT

RULE 26 - ABSENT WITHOUT PERMISSION

- 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 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.

RULE 7 - LEAVE OF ABSENCE

(a) When requirements of the service will permit, and if satisfactory reason is given therefore, employees, upon written request, shall be granted leave of absence for a limited time, without loss of seniority. If for thirty (30) days or less, request must be made to the employee's supervisor. If more than thirty (30) days, request must be made to the Designated Officer, in writing, with a copy to the designated union representative. Leave of absence in excess of ninety (90) days shall not be granted unless agreed to between carrier's Highest Designated Labor Relations Officer and the General Chairman. Employees failing to return when leave of absence expires will forfeit seniority unless proper extension has been obtained.

POSITION OF ORGANIZATION:

- 1) The Organization contends that the Carrier failed to comply with Rule 26 Forfeiture of Seniority process, and failed to provide the Claimant with notice of seniority forfeiture pursuant to Rule 26. The Forfeiture of Seniority Letter was mailed to the wrong address despite the Claimant updating his address with the Nurse at the Medical Department; the Claimant no longer maintained the post office box that was on his employment records with the Carrier's system. The record establishes that subsequent to the notification of his new

address, the Claimant received correspondence from the Carrier at the old address. The Carrier contacted the Claimant on August 30, 2016 to discuss his ability to return to service; this was the Claimant's first notification received from the Carrier's representative that the Carrier had invoked Rule 26. The Claimant contacted the Organization, and an appeal was initiated by letter dated September 28, 2016. The Organization asserts that the failure of the Carrier to provide the Claimant with proper notification is a denial of the Claimant's contractual right to notice under Rule 26.

- 2) The Organization further contends that the record reflects that the Claimant complied with the Carrier's request for medical records and as such, was not absent without authority. The Carrier asserts that the Carrier does not dispute the on-property handling of the claim regarding the Claimant's medical status or that the Claimant was medically unqualified for service. It is bad faith for the Carrier to issue a Rule 26 (B) when the Carrier is aware the Claimant has been off due to his injury. The Claimant's absence was based on either sick or disability, and as such, there is no valid basis to terminate the Claimant's seniority.
- 3) The Organization contends that there have been various cases where the Board has reviewed Rule 26 and similar rules, and have determined that the Carrier's failure to strictly comply with the language or spirit of Rule 26 is grounds to sustain the claim.
- 4) It is the position of the Organization that the claim be sustained as submitted.

POSITION OF CARRIER:

- 1) The Carrier contends that the appeal is untimely, and therefore the claim should be denied. Rule 26 reads in relevant part "...The employee or his representative may appeal from such an action to the carrier's highest designated officer within (30) days under Rule 25, Section 3..." The Carrier asserts that the Claimant and the Organization failed to appeal said notice until September 28, 2016, and there was no extension granted.
- 2) The Carrier further contends that the Organization failed to show a violation of any rule or Agreement. Rule 26 reads: (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) 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 officer within 30 days under Rule 25, Section 3..." The Carrier asserts that the Claimant began missing work on October 20, 2014 after his physician established a return to work date of October 23, 2014. Once the return to work date passed, the Claimant's status changed to absent, and without any further medical documentation, the Claimant does not receive the safe harbor or exemption from Rule 26. The Claimant failed to provide any medical documentation of sickness or disability after October 23, 2014.

- 3) Moreover, the Carrier contends that all employees are required to know and comply with the Carrier's operating rules, specifically, Operating Rule 104.8 which requires employees to keep their mailing address and phone number current with the Carrier. The Claimant failed to do so, and the fact that the Claimant provided a different address to the Medical Department nurse stating that the address supplied was his "preferred" mailing address does not alleviate his responsibility to formerly update his contact information with the Carrier. The Carrier mailed the letter in accordance with procedure. In addition, Rule 26 permits either the employee or the Organization to appeal the forfeiture. The Carrier argues that even if the letter did not reach the Claimant, it did reach his representative.
- 4) The Carrier lastly argues that there is no evidence of a violation of Rule 7 regarding leave of absence. There is no evidence that the Claimant requested or was granted a leave of absence.
- 5) It is the position of the Carrier that the Organization has failed to meet its burden of proof. The Claimant has not returned to work. The Carrier contacted the Claimant on several occasions to demonstrate why he is medically not qualified to return to work, and he failed to do so. This claim should be denied in its entirety.

After consideration of this record, the Board has determined that whether the claim is resolved under procedure or merits, the outcome will not change, and an award on merits is preferred. Initially, the Board finds that this action was prosecuted on Rule 26 and not Rule 7. This claim does not arise from Leave of

Absence. Rule 26 is designed to address issues resulting from the "walk away" employee; the provision is a self-executing, non-disciplinary termination of seniority rights. Rule 26 (b) provides for three exceptions to the seniority forfeiture process; these exceptions include sickness, disability, or circumstances beyond an employee's control. It is not disputed that the Claimant's original reason for absenting himself from work was due to an on-duty injury. The Carrier argues that in order to maintain exempt status, the Claimant must have kept the Carrier abreast of thorough medical documentation of his disability. The failure of the Claimant to provide proper medical documentation required him to return to work. The Claimant did not. The Organization argues that the Carrier had sufficient documentation to support a finding of disability.

The Board finds that sufficient evidence was presented to establish that the Claimant failed to abide by the specific provisions of Rule 26. The Board notes that the Claimant began missing work on October 20, 2014, after his physician had established a return to work date of October 23, 2014. Once that return to work date transpired, the Claimant's status changed to "absent." The Claimant's failure to provide further medical documentation prevented him from pursuing his rights under any exemptions provided by Rule 26.

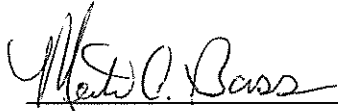
The Board has carefully reviewed the record and finds that there was insufficient medical documentation provided to the Carrier to justify the Claimant's continued absence from work, and to meet an exception of Rule 26 (B) to avoid forfeiture of his seniority rights. The Board finds that the Carrier has not violated the terms of Rule 26 (B).

AWARD


Claim denied.

ORDER

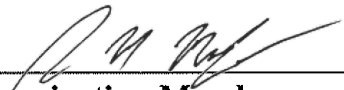
This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant not be made.



Meeta A. Bass, Neutral Member



Carrier Member
Dated: 5/21/19



Organization Member
Dated 5/21/19