

PUBLIC LAW BOARD NO. 7357

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employes
Division – IBT Rail Conference

Award No. 67
Case No. 67

-and-

Delaware and Hudson Railroad Company d/b/a Canadian Pacific Railway

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

1. The Carrier's termination of Mr. M. Keyes' seniority, by letter dated August 3, 2016, for allegedly being absent without permission for more than fourteen (14) consecutive days was arbitrary, capricious and without just or sufficient cause and constituted a violation of the Agreement (DHR).
2. As a consequence of the violation referred to in Part 1 above, Claimant M. Keyes' shall '...be returned to service immediately and made whole for all unnecessary losses in wages and benefits (including qualifying time for vacation and RRB months of service) that he has been wrongfully denied.' (employees' Exhibit 'A-1')."

FINDINGS:

This Public Law Board No. 7357 finds that the parties are Carrier and Employee, within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction.

By letter dated August 3, 2016, the Claimant, Mr. Michael Keyes was notified by the Carrier that his position was terminated as follows:

Dear Mr. Keyes,

This letter is to inform you that your Position with Canadian Pacific Railway has been terminated per Rule 26.2 of the Collective Bargaining Agreement. You have been absent without permission for more than 14 consecutive days, your last day reporting for duty was June 30th, 2016.

This notice has also been forwarded regular mail delivery via the United States Postal Service and will be deemed delivered,

Regards,

Don Murray
Director Track Renewal

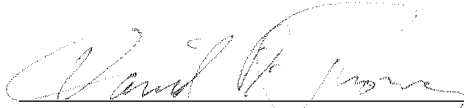
The Organization appealed this matter, and it has been properly progressed to this Board for adjudication.

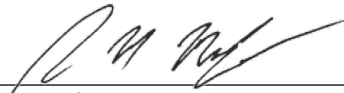
Rule 26.2 states in pertinent part:


Except for sickness or disability, or under circumstances beyond his control, an employee who is absent in excess of 14 consecutive days without receiving permission from his supervisor will forfeit his seniority under this agreement.

Mr. Keyes' last day worked was June 30, 2016. He was next scheduled to work on July 5, 2016 and he failed to protect his assignment or contact a manager as required by Rule 26.1. Thereafter he failed to report for duty or contact a manager on July 6, 7, 11, 12, 13, 14 and 18, over a fourteen consecutive day period without receiving permission from his supervisor. Nor, had he contacted a supervisor prior to the Carrier's August 3, 2016 letter notifying him of his termination under Rule 26.2 for being absent without permission for more than 14 consecutive days. We find that under the provision of Rule 26.2, Mr. Keyes' seniority was forfeited and his employment was properly terminated under this self-executing rule. No basis exist in the record before this Board to alter the Carrier's determination. We must deny this claim.

Award
Claim denied.


Chairman and Neutral Member


Employee Member


Carrier Member

Dated: 02/12/19