

PUBLIC LAW BOARD NO. 7599

AWARD NO. 122

CASE NO. 122

**PARTIES TO
THE DISPUTE:** Brotherhood of Maintenance of Way Employees Division
IBT Rail Conference

vs.

Grand Trunk Western Railroad Company

ARBITRATOR: Gerald E. Wallin

DECISION: Claim denied

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

1. The termination of Mr. A. Groth pursuant to Rule 4, Section 2(b) of the Agreement in connection with not exercising seniority after seven (7) days in light of extenuating circumstances was unjust, unwarranted and in violation of the Agreement (System File Groth192189PG011421/GTW-BMWED-2021-00005 GTW).
2. As a consequence of the violation referred to in Part 1 above, Claimant A. Groth shall now be properly placed back on the seniority roster with all rights and benefits restored and be compensated for all lost time."

FINDINGS OF THE BOARD:

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.

Claimant's employment was terminated per the Agreement when he did not bump into another position within seven days of being displaced on December 29, 2020. The Carrier activated claimant's termination per Rule 4, Section 2, Paragraph B. The rule provides that failure to bump within the time limit results in forfeiture of seniority and severance of all employment rights.

The record contains the text of email exchanges whereby the Carrier warned claimant that he must bump not later than January 4, 2021. They discussed whether weekend and holidays counted in calculating the allowable seven days. Claimant was informed that all calendar days are counted. Claimant did

not mention anything about not feeling well or being under a doctor's care.

On the seventh day, claimant was again contacted by email to find out if he had bumped anywhere. He said he had not. He informed the Carrier official as follows:

No I didn't want to bump anywhere until things calmed down a bit. No sense in keeping on getting bumped.


Again, claimant did not mention anything about being under a doctor's care or that he was unable to work.

Accordingly, the Carrier sent claimant a certified letter informing him that his employment had been terminated. On January 7, 2021, after the seven-day bumping period had expired, the Organization claimed to have a doctor's note stating that claimant was unable to work.

Under the circumstances, we do not find the record to provide a proper basis for disturbing the Carrier's termination action. Therefore, the grievance must be denied.

AWARD:

The Claim is denied.


Gerald E. Wallin, Chairman
and Neutral Member


John Schlismann,
Organization Member


Patrick Crain,
Carrier Member

Date: 20 Mar 2023