

PUBLIC LAW BOARD NO. 6564

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

And

CSX TRANSPORTATION, INC.

Case No. 25

Statement of Claim: It is the claim of the System Committee of the Brotherhood that:

- (1) That Basic Track Foreman D. E. Bergstrom was improperly removed from all Maintenance of Way Rosters on July 31, 2002.
- (2) That D. E. Bergstrom be allowed to return to work, starting with the date of January 10, 2003, and be paid for days lost.

Facts

Claimant Dana Bergstrom was hired in the Track Department on April 2, 1975. He held Basic Track Foreman position 5P03-066 when he marked off sick for one day, July 15, 2002. Thereafter, he had no contact with the Carrier, and on July 31, 2002, Chief Regional Engineer K. A. Downard sent a letter to Claimant notifying him that, pursuant to Rule 26(b) of the Collective Bargaining Agreement, he had forfeited his seniority.

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 if 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 January 24, 2003, BMW's Vice General Chairman L.A. Buckley filed a claim seeking Claimant's reinstatement and lost wages "in response to a letter received by [Buckley's office] from Dana Bergstrom ID# 618751 requesting to return to work after being off sick receiving treatment at Project Rehab, at Grand Rapids, MI." (Carrier's Ex. C). Buckley attached a copy of a letter, dated January 13, 2003, containing no apparent addressee, from Project Rehab, advising that Claimant had completed an in-patient treatment program on January 9, 2003.

By letter dated March 19, 2003, K.A. Downard denied the claim. He cited Rule 26 and also noted that Claimant had already been afforded leniency by the Carrier in regard to an absence issue that had arisen in April 2002. According to Downard, even after returning from a thirty day suspension, May 23 – June 21, 2002, Claimant "continued to show total disregard for the importance of protecting his assignment with no contact with his supervisor." (Carrier's Ex. D).

The Organization appealed the claim on March 26, 2003, and the Carrier denied the appeal on April 26, 2003. A conference was held on May 14, 2003, and thereafter, with no resolution having been achieved, the claim was submitted to this Board for determination.

Opinion

The Carrier claims that the claim should be dismissed because (1) Claimant Bergstrom severed his employment relationship with the Carrier, and (2) both Claimant and the Organization failed to appeal the July 31, 2002 notice of forfeiture within the thirty day time period prescribed in Rule 26.

The facts are largely undisputed in this matter. Claimant was absent from work without permission beginning July 16, 2002, and he had no contact with the Carrier until the Organization filed a claim on January 24, 2003.

There is nothing in this record demonstrating that Claimant's absence was due to sickness, disability, or circumstances beyond his control. But even assuming, *arguendo*, that such was the case, the Claimant never made that representation within the thirty day time limit contained in Rule 26. The only documentation in the Record is the letter dated January 13, 2003 from Project Rehab which refers to Claimant's completing an inpatient treatment program and participating in a transitional living program. This letter, however, does not confirm the existence of any extenuating situation as of the time Claimant abandoned his job. Moreover, it was not submitted within the time frame for appeal that is clearly set forth in Rule 26.

In sum, there was no timely declaration by Claimant of sickness or disability, which might have justified his failure to protect his assignment. He was simply absent without permission beyond fourteen consecutive days and therefore triggered the self-executing provisions of Rule 26. He then failed to contact the Carrier within the prescribed time to demonstrate extenuating circumstances that might have contributed to his lengthy absence.

Given the evidence in the Record, the Organization's position appears to be a request for leniency. The Board is mindful that Claimant was a long-term employee. His seniority did not give him the right, however, to absent himself from work for an indeterminate period of time without contacting his employer. Furthermore, numerous

arbitration decisions have held that even where an employee's absence is for legitimate medical reasons, proper authority must be obtained for a leave of absence. As was held in *NRAB, Third Division Award No. 34973* (Cohen):

The Board concludes that the Claimant did not have proper authority to absent himself from his assignment from August 14 to 29, 1995. Despite entering a rehabilitation program, the Claimant was required to contact the Carrier to indicate his reason for not coming to work.

* * * *

Placed in its proper context, notification to the Carrier is an obligation of a minimal nature not requiring expenditure of effort or time when balanced against the grave consequences for failing to notify the Carrier. (Carrier's Ex. H).

For the foregoing reasons, it must be held that the instant claim lacks merit. Were Claimant reinstated based on the record evidence in this case, the Board would be rewriting the Collective Bargaining Agreement and issuing a decision that flies in the face of clear contract language and arbitral precedent.

Award

The claim is denied.

James T. Klintzsch
Carrier Member

Dated: July 13, 2004

Joan Parker
Joan Parker, Neutral Member

Robert Salway
Organization Member

Dated: 7-13-04