

**PUBLIC LAW BOARD NO. 6564**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**And**

**CSX TRANSPORTATION, INC.**

**Case No. 26**

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

- (1) The discipline (seniority termination) assessed Trackman S. R. Brown was without just and sufficient cause.
- (2) Trackman S. R. Brown shall not be reinstated to service with Seniority and all other rights unimpaired.

**Facts**

Claimant S. R. Brown was hired in the Track Department on April 24, 1975. He was assigned to SPG Force 5XR2 as a Production Trackman when, after completing his shift on Thursday, April 14, 2002, he failed to return to work on his next scheduled day, April 18, 2002, without notifying his supervisor. He did not protect his assignment and made no contact with the Carrier in the ensuing weeks. Therefore, by letter dated May 8, 2002, the Carrier informed Claimant that he had forfeited his seniority in accordance with the self-executing provisions of Rule 26 of the Collective Bargaining Agreement. Those provisions state, in relevant part:

- (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 Organization appealed the Carrier's action on May 9, 2002, alleging that "due to circumstances beyond his control, S. R. Brown has been unable to report for his trackman position on the 5XR2." (Carrier Ex. B). No details were offered by the Organization, however, as to the nature of the circumstances that prevented Claimant from protecting his assignment. CSXT denied the appeal on June 7, 2002. As of that date, Claimant had still not contacted the Carrier.

A conference was held on August 8, 2003. At that time, the Organization submitted via facsimile transmission a handwritten statement from Claimant in which he admitted that he had failed to protect his assignment. He explained, however, that he had a drug/alcohol problem and that with the help of the Carrier's Employee Assistance Program (EAP), he had entered a substance abuse program at St. Lukes Treatment Center.

The parties exchanged additional correspondence but were not able to resolve the matter. Therefore, they agreed to present the dispute to this Board for final decision.

### **Opinion**

The Organization contends that Claimant acknowledged his problem and took positive steps to control his disease. He contacted the EAP, and was directed to Charlie's ¾ House, Inc. He then successfully completed an alcohol and drug treatment program at St. Lukes Hospital and was released on June 18, 2002. Thereafter, he returned to

Charlie's ¾ House for additional treatment, during which time he also attended weekly aftercare treatment sessions at St. Lukes Hospital, as well as AA/NA meetings on a regular basis. The Organization submits that Claimant has regained control of his life and therefore deserves an opportunity to become a reliable, sober, and productive employee.

Claimant is to be commended for the steps he has taken to regain sobriety. It remains undisputed, however, that Claimant left work on April 14, 2002 and had no contact with the Carrier until the Organization filed a claim on his behalf on May 9, 2002. In fact, Claimant did not contact the EAP Manager, Sue Oxley, until May 17, 2002, more than a week after his termination and five weeks after he last reported to work. Ms. Oxley gave Claimant a referral to St. Lukes Treatment Center, but at no time did she recommend that Claimant be returned to service, as alleged by the Organization. Moreover, after being referred to St. Lukes Hospital, the next contact Claimant had with the EAP was on August 3, 2002, at the behest of the Organization, and only after his alleged stay at Charlie's ¾ House was completed.

Given these facts, it is clear that Claimant failed to protect his assignment. While on May 9, 2002, the Organization represented that Claimant's absence from work was due to circumstances beyond his control, it did not provide any details to substantiate this claim. It was not until August 8, 2003 that Claimant asserted for the first time that he was undergoing treatment for substance abuse. This representation – some 16 months after he abandoned his job – does not prove there were extenuating circumstances in April 2002.

Furthermore, even assuming that Claimant legitimately was involved in a treatment


program, he had an obligation to protect his assignment. He was absent without permission and made no effort to contact any Carrier official. Claimant's action in seeking the assistance of the EAP did not satisfy his responsibility to advise his supervisor of his whereabouts and the basis for his extended absence.

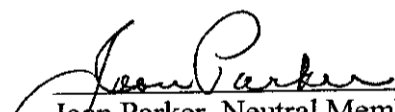
Rule 26 recognizes that in certain situations, sickness, disability, or extraordinary circumstances may prevent an absent employee from contacting the Carrier within fourteen days. In the instant case, however, there has been absolutely no showing that Claimant was unable to comply with the notification requirements of Rule 26.

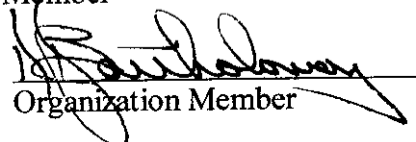
The contractual duty to provide notice of an extended absence is neither unreasonable nor unduly burdensome. Moreover, numerous arbitration boards have held that participation in a rehabilitation program does not excuse an employee from notifying the Carrier about his absence from work. (See, e.g., *NRAB, Third Division Award Nos. 34973 (Cohen), 31788 (Chamberlain), 31144 (Hicks); SBA No. 1016, Award No. 89 (Fletcher); PLB No. 3781, Award No. 20 (Blackwell)*). Claimant Brown simply showed a callous indifference to the responsibilities he owed his employer. He was absent for months without contacting his supervisor or any other official at CSXT. In this situation, Rule 26 mandates a forfeiture of seniority.

**Award**

The claim is denied.

  
Carrier Member  
Dated: July 13, 2004

  
Joan Parker, Neutral Member

  
Organization Member  
Dated: 7-13-04