

PUBLIC LAW BOARD NO. 7008

PARTIES TO THE DISPUTE:

BROTHERHOOD OF MAINTENANCE OF
WAY EMPLOYEES DIVISION INTERNATIONAL
BROTHERHOOD OF TEAMSTERS

- and -

CSX TRANSPORTATION, INC.

STATEMENT OF CLAIM:

Please consider this as a claim filed on behalf of Trackman T.J. Stallins, ID#*****, for forty (40) hours straight time, and any overtime made by junior employees, plus expenses, beginning on June 26, 2006, and continuing until Mr. Stallins is returned to work, at the respective hourly rate and overtime rate of pay (Trackman 18.06). This claim is filed because the Carrier violated the June 1, 1999 Agreement when they refused to give Mr. Stallins an Unjust Treatment Hearing.

OPINION OF THE BOARD:

T, J. Stallins (hereinafter referred to as "Claimant") was hired in Carrier's Maintenance of Way Track Department (Henderson District) on May 20, 2003. At the time this dispute arose, the Claimant held a basic Trackman position (5K35-081) and was headquartered at Atkinson KY. Claimant's assigned work hours were 7:30 a.m. to 4:00 p.m. Monday through Friday.

The record demonstrates that Claimant Stallins last performed service on Tuesday, November 29, 2005, and thereafter, commencing December 5, 2005, Stallins was absent, without permission. On January 11, 2006, Engineer Track G. Kirkpatrick notified Stallins of his "forfeiture of seniority" in accordance with Rule 26 of the Agreement, sending a second copy of the notification to General Chairman E. Brassel of the Organization. Thereafter, Vice Chairman A. Shelton filed a claim with

Carrier's Division Engineer G. Mellish on August 25, 2006, wherein Mr. Mellish asserted that: "*The Organization by letter dated May 18, 2006, and in accordance with Side Letter 32 of the Agreement, asked for an Unjust Treatment Hearing for Mr. Stallins. As of August 25, 2006, the Carrier has failed to respond to the Organization's request*".

In an October 20, 2006 declination, Division Engineer Mellish recounted the events which led to the Claimant's forfeiture of seniority. Specifically, Mr. Mellish affirmed that it had never received the aforementioned May 18, 2006 claim, "from the Organization or an employee" regarding an Unjust Treatment Hearing request. Mr. Mellish went on to assert that the "alleged" request for an unjust treatment hearing, "even if it existed", was filed beyond the "prescribed" times as set forth in the Agreement.

The Organization rejected the Division Engineer's declination, and appealed the claim for a second time on November 5, 2006. In that claim, the Organization reiterated its earlier expressed position, and added, "*...the Carrier has furnished no proof that Mr. Stallins was absent on the days in question*". Thereafter, in a letter dated December 21, 2006 Director Labor Relations J. Wilson confirmed the parties' December 5, 2006 conference and declined the Organization's appeal. Specifically, Director Wilson argued that the Claimant did not perform any service for which he was entitled to compensation since November 30, 2005, and was "inexplicably absent" from work, without authority, beginning December 5, 2005. Mr. Wilson further argued that: "*In addition to a failure to timely request an unjust treatment hearing, both the Claimant and the BMW failed to exercise the right of appeal of the forfeiture of seniority within thirty days or explain otherwise the reason(s) for Claimant Stallins disappearance and prolonged, unexcused absence from work per Rule 26*".

At the outset the Organization maintained that on May 18, 2006, it submitted a letter to the Carrier requesting an unjust treatment hearing for Claimant Stallins. However, there is no evidence on this record which demonstrates that Carrier did, indeed, receive the disputed correspondence and failed to respond in a timely manner. Since the Organization raised the issue, it was incumbent upon the Organization to support its claim in that regard. Its failure to produce any probative evidence in support of that assertion renders that portion of the claim moot.

Turning to the merits of the dispute, Rule 26(a) of the Agreement provides that: "An employee unable to report to work for any reason must notify his supervisor as soon as possible." Rule 26(b) further states, in pertinent part: "...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 record evidence, including supporting payroll records, demonstrates that the Claimant last performed service for Carrier on Tuesday, November 29, 2005, and was absent, sans permission, beginning December 5, 2005 and continuing. Claimant made no effort(s) to explain his sudden "disappearance", nor did he solicit permission for such a prolonged failure to report, as scheduled, for work. Premised upon the circumstance, including the Claimant's abandonment of his position, without explanation, this claim must be denied.

PLB 7008

AWARD No.29

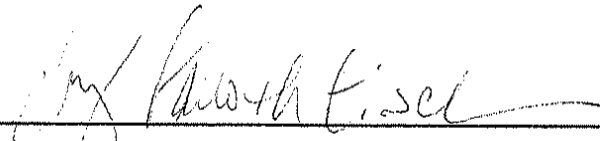
NMB CASE No.29

UNION CASE No.156708706

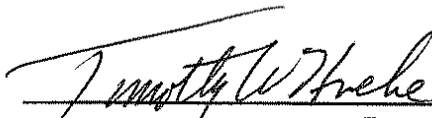
COMPANY CASE No.12(06-1177)

AWARD

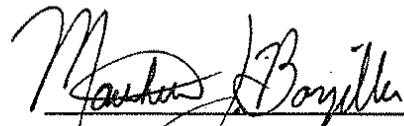
Claim denied.



Nancy Faircloth Eischen, Chair



Union Member 3-20-08



Company Member 3/20/2008