

The Second Division consisted of the regular members and in addition Referee George E. Larney when award was rendered.

Parties to Dispute: { International Brotherhood of Electrical Workers
{ National Railroad Passenger Corporation

Dispute: Claim of Employees:

- (1) That the Carrier erred and violated the contractual rights of Mr. Leonard Jackson when they invoked the provisions of Rule 28(b) of the IBEW-Amtrak Agreement and terminated him on May 30, 1978.
- (2) That the Carrier further erred and violated the contractual rights of Mr. Leonard Jackson by refusing to allow him to return to work on August 23, 1978, in violation of Rule 28(b) of the IBEW-Amtrak Agreement.
- (3) That, therefore, he be returned to service with seniority and all other rights, benefits and privileges restored, and
- (4) That he be compensated for all time lost including holiday and overtime pay, and
- (5) That he be made whole for health and welfare benefits, and
- (6) That he be made whole for all vacation rights, and
- (7) That he be made whole for pension benefits, unemployment and sickness insurance, and
- (8) That he be made whole for any and all other benefits, not specifically mentioned herein, that he would have received or would have earned had he not been withheld from service.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employees involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

At the time of his removal from service, effective May 30, 1978, Claimant, Leonard Jackson, was holding the position of Electrician at Carrier's 21st Street Diesel Maintenance Facility in Chicago, Illinois. The record evidence reflects that on date of May 17, 1978, Claimant contacted Facility Manager, W. Rodgers, and reported off ill. On the following day, May 18, 1978, Claimant sought medical assistance from a Doctor D. L. Parris, who diagnosed Claimant as suffering from both Pneumonitis and Hemorrhoids. On date of May 22, 1978, Claimant called Carrier and spoke with Supervisor Tracy, wherein, according to the Organization, the Claimant related that he was under doctor's care and did not know when he would be back to work. Carrier acknowledges the Claimant's call on May 22, 1978, but denies he apprised Tracy he was under physician's care and would be off work for an indeterminate period of time. According to the Carrier, Tracy instructed the Claimant during this telephone conversation to call in on a daily basis to report off ill. Claimant, according to the Carrier, disregarded this instruction and by doing so caused him to effect his own resignation pursuant to Rule 28 of the controlling Agreement effective September 1, 1975. Rule 28 (a) and (b) reads in whole as follows:

"UNAUTHORIZED ABSENCE:

- (a) Employees shall not absent themselves from their assigned positions for any cause without first obtaining permission from their supervisor. In cases of sickness, emergencies or when the supervisor cannot be located, they shall notify their supervisor or another person in authority as soon as possible.
- (b) Employees who absent themselves from work for five days without notifying the Company shall be considered as having resigned from the service and will be removed from the seniority roster unless they furnish the Company with evidence of physical incapacity as demonstrated by a release signed by a medical doctor or that circumstances beyond their control prevented such notification."

The record evidence reflects that by letter dated May 30, 1978 and sent by certified mail, return receipt requested, Carrier notified Claimant he was in violation of both Rule 28 and the Diesel Shop's Attendance Policy, and thereby had been terminated from all capacities of its employ. The Attendance Policy referred to in the letter reads as follows:

"An employee intending to be absent from his or her tour of duty must report same to a supervisor at their facility at least one hour prior to that tour of duty affected, giving reason for intended absence and length of time to be absent."

The record evidence further reflects that this letter directed to Claimant's last known address was returned as undeliverable and thereby Claimant was not knowledgeable as to Carrier's action. When Claimant learned of his termination through a friend on date of July 17, 1978, he immediately presented himself to Superintendent Schlax on the same date to discuss the matter. Schlax advised the Claimant to see Facility Manager Rodgers about the problem. The Carrier

maintains Schlax meant the Claimant should see Rodgers that day while the Organization contends his advice pertained to the time the Claimant was ready to return to work.

The Organization maintains the Claimant complied with the requirements set forth in Rule 28(a) and by doing so was under no obligation to make notification pursuant to Rule 28(b). Notwithstanding this contention, the Organization argues the Claimant did nevertheless comply with Rule 28(b) when he contacted Supervisor Tracy on date of May 22, 1978. Furthermore, Claimant did, the Organization notes, furnish Carrier with evidence of physical incapacity when he presented a medical release form signed by his physician. This medical form, contends the Organization, further meets the requirements set forth in Rule 28(b). The Organization maintains the Claimant was only obligated to comply with the relevant contractual requirements as set forth in Rule 28(a) and was not bound to adhere either to the Carrier's unilateral Attendance Policy requirements nor to the verbal directive issued by Tracy that he telephone in on a daily basis. For all these reasons, the Organization asserts, the Claimant was wrongfully terminated from service.

The Carrier argues the Claimant was only cited for violation of part (b) of Rule 28 and not part (a). Carrier contends Claimant did, in fact, absent himself from work for five (5) days, to-wit, May 23, 24, 25, 26 and 27, without notification, thereby effecting his own resignation. Carrier further argues that the physical incapacity referred to in Rule 28(b) has to do with an inability to make proper notification within the allotted five (5) days rather than with the inability to physically perform the duties of the position. Carrier also argues that the directive issued to Claimant on May 22, 1978 to call in and report off work on a daily basis was indeed proper and not a violation of Rule 28(b) of the controlling Agreement as so alleged by the Organization. In further support of its contention on this latter point, Carrier argues such a directive was meant to guard against excessive absenteeism on the part of the Claimant as he had established a past history of being absent. As further proof the Claimant was in need of such guidance, the Carrier notes Claimant was released for work by his physician beginning July 17, 1978, but in fact did not actually report back to work until August 18, 1978.

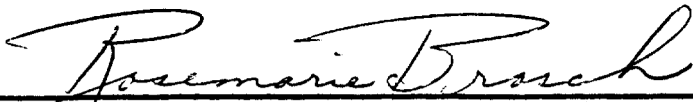
Upon a review of the entire record, we find the Claimant did comply with the requirements of Rule 28(b) when he contacted the Carrier on date of May 22, 1978. Therefore, the Carrier's action of terminating the Claimant on May 30, 1978, was both wrongful and premature. However, in view of the medical documentation showing the Claimant was released to return to work on July 17, 1978, and the fact that he did not present himself for work until August 18, 1978, and further that within this approximate thirty (30) day period he made no notification to Carrier, we find Claimant in this period violated Rule 28(b) and effected his own termination. Under all the prevailing circumstances, we find Carrier erred in terminating the Claimant on May 30, 1978, and therefore is liable to make the Claimant whole for all applicable monetary benefits between the dates of May 23, 1978 and July 17, 1978. Thereafter, the Carrier is free of any liability as Claimant failed to meet the requirements of Rule 28(b) thereby effecting his own resignation five (5) days after July 17, 1978, the date he was released to return to work.

A W A R D

Claim sustained in part and denied in part as per Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 11th day of August, 1982.