

The Second Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

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

Dispute: Claim of Employees:

1. That under the current Agreement, the National Railroad Passenger Corporation (Amtrak) unjustly dismissed Electrician Vincent Mata from service effective December 7, 1979.
2. That accordingly, the carrier be ordered to restore Electrician Vincent Mata to service with seniority unimpaired and with all pay due him from the first day he was held out of service until the day he is returned to service, at the applicable Electricians' rate of pay for each day he has been improperly held from service; with all benefits due him under the group hospital and life insurance policies for the aforementioned period; all railroad retirement benefits due him, including unemployment and sickness benefits for the aforementioned period; all vacation and holiday benefits due him under the current vacation and holiday agreements for the aforementioned period; and all other benefits that would normally have accrued to him had he been working in the aforementioned period in order to make him whole.

Findings:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

The Claimant, Vincent Mata, was employed as an electrician at the Carrier's 14th Street facility in Chicago, Illinois. The record shows his last work day was October 25, 1979. By letter of December 7, 1979, he was dismissed from the service under Rule 28 - Unauthorized Absence.

The Organization claims it was improper to consider the Claimant as having resigned under Rule 28 (b) because he furnished the Carrier with evidence of physical incapacity to come to work to perform his work during his period of absence.

Rule 28 (b) provides, in part, that:

"Employees who absent themselves from work for five days without notifying the Company shall be considered as having resigned from the service ... unless they furnish the Company evidence of physical incapacity as demonstrated by a release signed by a medical doctor ..."

The Organization requests this Board to find the invoking of Rule 28 (b) to be improper and that such a finding requires the Claimant be afforded a fair and impartial hearing pursuant to Rule 23.

The doctor's note referred to indicated the Claimant was under Dr. Cordova's care from November 2, 1979, until December 9, 1979, for abdominal pain and that he could return to work on December 10. Singularly, this Board observes that the period from October 26 through November 1 is not covered. We also note the Claimant did not notify his supervisor or any other Carrier authority that he was sick during the period October 26 through December 7, 1979. Accordingly, we find no basis in this record to conclude Claimant was disabled to the extent it prevented his contacting the Carrier. Furthermore, the record is void of any information covering the period October 26 through November 1, a period of time sufficient for Rule 28 (b) to take effect.

This Board finds Rule 28 (b) to be self-invoking and does not result in the imposition of discipline. This conclusion is consistent with prior Board holdings which involved self-invoking rules. Therefore, there is no need for a hearing. In conclusion, the Carrier did not violate the agreement when it applied Rule 28 (b) nor was the Claimant wrongfully deprived of a hearing.

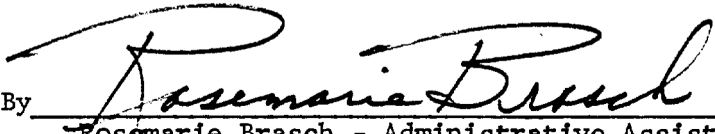
A W A R D

Claim denied.

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 13th day of July, 1983.