

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

(International Association of Machinists  
( and Aerospace Workers  
PARTIES TO DISPUTE: (  
(National Railroad Passenger Corporation (Amtrak)

STATEMENT OF CLAIM:

1. The National Railroad Passenger Corporation, (Amtrak) violated Rule 28 (b) of the schedule agreement effective September 1, 1977, when it arbitrarily and capriciously notified Chicago Machinist P. Stoj on May 7, 1987 that he was considered as having resigned.

2. Accordingly, Machinist P. Stoj should be reinstated, and made whole for any and all losses as a result of Carrier's notice of May 7, 1987.

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 employes involved in this dispute are respectively carrier and employes 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.

In the instant case the record discloses the following facts. Claimant failed to report for his assigned position on April 27 and 28, 1987. By certified letter dated April 28, 1987, Claimant was notified that his failure to contact the Carrier within five (5) days would violate Rule 28(b) of the Agreement. Claimant signed for the letter. That letter quoted Rule 28(b), which states:

"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 evidence of physical incapacity demonstrated by a release, signed by a medical doctor or that circumstances beyond their control prevented such notification."

On behalf of the Claimant the Organization pointed toward commuting hardships and the vandalization of Claimant's automobile. It is the Organization's position in the whole of this case that personal problems contributed to the Claimant's inaction.

The Carrier argues that Claimant clearly violated the Agreement when he neither informed his Supervisor that he would be unable to work, nor came to work. Carrier points out that it never received any telephone communication from the Claimant.

The facts at bar support the Rule application. Claimant was absent in excess of five (5) days. The Carrier was not given the appropriate notification. There is no evidence of medical incapacity or other mitigating circumstances, which would have prevented the Claimant from contacting the Carrier about the reason for his inability to work.


This Board finds that Rule 28(b) is a self-invoking Rule. The consequences of the Claimant's failure to responsibly follow the Agreement authorizes the Carrier to consider the Claimant as having resigned. This is consistent with numerous Awards relating to self-effectuating provisions (Second Division Awards 10378, 9572, 9511, 9406; Third Division Awards 27777, 27495, 27228). The record supports the Carrier's action. This Board finds no violation of the Agreement.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 16th day of January 1991.