Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 8220
Docket No. 8035
2-NRPC-FO-'80

The Second Division consisted of the regular members and in addition Referee Robert E. Fitzgerald, Jr. when award was rendered.

Parties to Dispute: (System Federation No. 97, Railway Employes' Department, A. F. of L. - C. I. O. (Firemen & Oilers)
(National Railroad Passenger Corporation

Dispute: Claim of Employes:

(1) That Amtrak erred and violated the contractural rights of Larry Baggett, when they removed him from service on April 25, 1978 by Certified Letter.

(2) That, therefore, Mr. Baggett be returned to service with all rights, privileges and benefits restored.

(3) That he be made whole for all health and welfare benefits, pension benefits, unemployment and sickness benefits and any other benefits he would have earned had he not been removed from service.

(4) Further, that he be compensated for all lost time, including overtime and holiday pay plus 6% annual interest on all lost wages and that such lost time be counted as vacation qualifying time.

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 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.

The Claimant was employed at the Carrier's facilities at Chicago, Illinois, and had a seniority date of January 16, 1976.

By letter dated April 25, 1978, sent by certified mail, the Carrier notified the Claimant that his absence since April 16, 1978, had resulted in his termination under the provisions of Rule 30 of the Collective Bargaining Agreement. The letter also referred to the violation of Attendance Policy which required notice to the supervisor of intent to be absent.

By statement of June 19, 1978, the Claimant submitted copies of a doctor's statement that he was under medical treatment during the April absence, and contended further that he called in to his supervisor's office during each day of absence. The Carrier refused to reinstate the Claimant upon request by the labor organization.

The organization makes the following contentions on behalf of the Claimant. Initially, it contends that the dismissal was improper because he had notified his supervisors that he was under doctor's care.

Secondly, it is contended that the Claimant was denied his right to due process under the provisions of Rule 25, because no hearing was held. Finally, it is contended that the dismissal of the Claimant was unwarranted, harsh, and excessive.

The Carrier's position is that the application of Rule 30(b) results in a self-executing termination of employment by the Claimant's absence in excess of five days without notice to the Carrier. They contend further that there is no requirement under the provisions of Rule 25 for a hearing when the self-executing provisions of Rule 30 come into play.

Rule 30(b) reads as follows:

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

This Board has held in prior cases, that Rule 30 is a self-invoking rule which does not result in discipline imposed by the Company, but rather results in automatic termination by the employee's conduct. In the Second Division Award No. 7429 (Referee Zumas) this Board held that a rule which is substantially the same as the instant Rule 30, was "a self-invoking rule and discipline was not involved in such dispute. Several awards of this and other divisions support this view."

Further in Second Division Award No. 7578 (Referee Wallace) the same conclusion was reached concerning a rule that is substantially identical to that of Rule 30 in the instant case. There, the Board quotes from Award No. 6606 (Yagoda) to the effect that Claimant's violation of the provisions of the Collective Bargaining Agreement by absenting himself from service was sufficient to result in automatic termination.

Therefore, it is clear that this Board was held in a number of prior cases that there was no requirement for hearing, under the provisions of Rule 25, when the conditions exist that require the operations of a rule such as Rule 30. Therefore, there was no need for a hearing to be invoked concerning Claimant's termination, because the provisions of Rule 30 are self-invoking and the Claimant had automatically terminated his services by his willful absence without notice to the employer as required by Rule 30(b). Therefore, no violation of the Agreement or of Claimant's due process occurred when Rule 30 was applied to result in Claimant's automatic termination.

A W A R D

Claim denied.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 9th day of January 1980.