

The Second Division consisted of the regular members and in addition Referee Paul C. Carter when award was rendered.

Parties to Dispute: { International Brotherhood of Firemen and Oilers
{ National Railroad Passenger Corporation

Dispute: Claim of Employees:

- (1) That Amtrak erred and violated the contractual rights of Walter C. Jeffers, when they removed him from service on September 5, 1978 by letter.
- (2) That, therefore Mr. Jeffers 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 entered the Carrier's service on April 1, 1978, and was employed as tractor operator at Carrier's Redondo Junction, California Maintenance Facility.

The Carrier states that on August 3, 1978, Claimant was granted a leave of absence through August 17, 1978, and the leave was subsequently extended to August 28, 1978. Claimant did not return to work on August 28 and on September 5, 1978, he was notified that he was considered as having resigned from the service pursuant to Rule 30 (b) of the applicable collective bargaining Agreement, which provides:

- "(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."

The Organization contends that claimant should have been granted an investigation under the Discipline Rule (Rule 25) of the Agreement.

It is well settled that this Board, being an appellate tribunal, may only consider the issues that were raised on the property, and both parties are precluded from proffering evidence for the first time when the dispute is referred to this Board. Under this principle, Organization's Exhibit "B" may not be considered.

As to the merits of the dispute, the Board finds Rule 30(b) to be a self-executing rule and that discipline under Rule 25 was not involved. See recent Award No. 8220 involving the same parties, also Awards 7429 and 7578 of this Division.

We find no violation of the time limit rule as the grievance in claimant's behalf was handled within the time limits specified in Rule 26.

We find that the Carrier's action was not in violation of the Agreement.

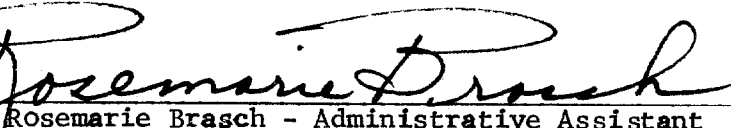
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 25th day of February, 1981.