

The Second Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

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

Dispute: Claim of Employees:

1. That the National Railroad Passenger Corporation (Amtrak) arbitrarily and unjustly removed Electrician James Fowler from the service on April 23, 1980 in violation of the Agreement.
2. That, accordingly, the National Railroad Passenger Corporation (Amtrak) be ordered to reinstate James Fowler to his former position with seniority rights unimpaired and compensated for all time lost.

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 were given due notice of hearing thereon.

Claimant, Mr. J. Fowler, entered service of the Carrier on May 18, 1976. By letter dated April 23, 1980 Claimant received notice that he was no longer considered in the employment of the Carrier because of violation of Rule 28(b). Claimant had failed to cover his assignment on April 15, 16, 17, 18 and 19, 1980 and he had allegedly failed to notify the Carrier of his whereabouts. Rule 28(b) reads as follows:

"Employees who absent themselves from work for five days without notifying the Company shall be considered 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 by a medical doctor or that circumstances beyond their control prevented such notification."

The Board is mindful of the fact that in order that a Carrier might function efficiently and effectively it must have employees who are dependable while on the job as well as dependable when it is a question of informing the Carrier of their whereabouts in the event of a sickness or other type of personal emergency so that the Carrier can reasonably carry out its management functions by means of substitutes. Rule 28 has been negotiated by the parties to precisely handle this latter type of eventuality and it contains qualifications to cover conditions of extreme duress. The Board is not persuaded that these conditions, for reasons stated above, have been met in the instant case and it will, therefore, deny the claim.

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 2nd day of March, 1983.

The record presented to this Board shows that the facts of the case are the following: Claimant was absent from work from April 12 to April 28, 1980. During that time he did not notify the Carrier of his whereabouts. On April 23, 1980 Claimant was sent notice noted above. On or about April 30, 1980 Claimant attempted to return to work with a doctor's statement dated April 29, 1980. This document stated that Claimant had been ill and was unable to work from April 12, 1980 to April 28, 1980. This notice also stated that Claimant "was confined to bed, was having frequent nausea and vomiting, and was advised neither to make (n)or receive calls or visits during this period. He is now doing well and may work. He was seen on 4-12; 4-22 and 4-25-80..."

A review of the evidence and arguments submitted to this Board in hearing and in accompanying exhibits and submissions lead it to conclude the following. First of all, Rule 28 is a self-invoking rule and its violation does not result in discipline by Carrier per se but its violation results in automatic resignation by the employee. Consistent with the above is the conclusion that neither Rule 23, which deals with Discipline-Investigation-Appeal, nor Rule 21 which deals with leave of absence, sick leave, etc., applies to the present case, as Organization argues, since the Board is not here dealing with a disciplinary action, nor with any type of leave. The sole question to be ruled on is whether Claimant himself resigned because of violation of Rule 28(b) of the controlling Agreement.

The Board finds nothing in Rule 28 to suggest that employees must notify the Carrier each and every day of a sickness and/or because of other circumstances beyond their control, but the Board does find Carrier position reasonable, specifically as Rule 28(b) states, that absence from work for five days without notification implies automatic resignation unless the extraneous conditions specified by this same Rule 28(b) hold, and the Board finds that Claimant did not pass the test of fulfilling these conditions. Rule 28(b) states no more nor less, in terms of employee obligations to the Carrier than that the employer be notified of an absence: the Rule does not even say explicitly nor by implication that it is incumbent upon the employee himself or herself to do this. Delegation of this obligation to a relative or to some other person would fulfill this Rule's requirements. From the record before this Board there is no indication that the Claimant did this. For all practical purposes Claimant simply disappeared on the days in question. Further, the statement from the attending physician does not persuade the Board that the Claimant was incapable of either making the minimal effort of notifying the Carrier himself, or of asking someone else to contact the Carrier to provide information on his condition and whereabouts. Again, this is all that was required by Rule 28(b) and Claimant did not do this. The doctor's statement also says that Claimant was seen on three different dates by the doctor when Claimant was not covering his assignment. The Board will not be so presumptuous as the Carrier to assume that this meant that Claimant physically travelled to see this doctor. It is possible that the doctor came to visit him. Nevertheless, under whatever conditions the Claimant saw the doctor becomes immaterial, in the mind of the Board, in view of the common sense observation that if Claimant could see the doctor he could have, either himself personally, or by means of a delegate, have notified the Carrier of his condition. Unfortunately, he made no attempt to do this.