

The Second Division consisted of the regular members and in addition Referee Josef P. Sirefman 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 Phillander Brooks from service on May 30, 1979 in violation of the current Agreement at Chicago, Illinois.
2. That the National Railroad Passenger Corporation (Amtrak) violated the time limit of the current Agreement when they failed to deny the claim submitted July 15, 1979.
3. That accordingly, the National Railroad Passenger Corporation (Amtrak) be ordered to reinstate Electrician Phillander Brooks to his former position with seniority rights unimpaired and compensated for all lost wages and benefits because of the National Railroad Passenger Corporation (Amtrak) improper action.

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.

Claimant Phillander Brooks, an Electrician, was hired by Carrier on December 28, 1976. On May 30, 1979 Claimant was notified in writing by the Carrier that "We have not heard from you by phone or letter stating you will be off for any period of time.", and that Claimant was in violation of Rule 28 (a) and (b) which read:

- "(a) Employees shall not absent themselves from their assigned positions for any cause without first obtaining permission from their supervisor. In case of sickness, emergencies or when the supervisor cannot be located, they shall notify their supervisor or another person in authority as soon as possible.
- (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 medical doctor or that circumstances beyond their control prevented such notification."

The record before this Board establishes that Claimant called in sick on May 20th, 1979. He was subsequently absent on May 21, May 22, May 23, May 24, May 25, May 28, and May 29, but did not contact the Carrier in any manner until May 30th when he returned to work with a doctor's note reciting that he had been suffering from "multiple allergies" and "sinusitis", required "bedrest" and could return to work on the 30th of May. The note is dated May 29th. In Second Division Award No. 9406, involving a claim between these very parties, concerning an absence of about two weeks without notification to the carrier, Referee E. L. Suntrup stated:

"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 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."

In the opinion of this Board these considerations are dispositive of the instant claim. There is no evidence in the record that Claimant indicated to the Carrier on May 20th, 1979 the nature and expected length of his illness nor does the information contained in the doctor's note indicate an inability, directly or through others, to notify the Carrier of his continued indisposition. In view of the automatic nature of Rule 28 (b) Claimant, in failing to follow its strictures, resigned his position with the Carrier.

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  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 15th day of June, 1983.