

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 Electrical Workers
(System Council No. 7
(National Railroad Passenger Corporation (Amtrak)

Dispute: Claim of Employees:

1. That under the current Agreement, the National Railroad Passenger Corporation (Amtrak) has unjustly terminated Electrician Ronald McMiller from service effective September 3, 1981.

2. That accordingly, the National Railroad Passenger Corporation (Amtrak) be ordered to restore Electrician Ronald McMiller to service with seniority unimpaired and with all pay due him from the first day he was held out of service until the day he is returned to service, at the applicable Electrician's rate of pay for each day he has been improperly held from service; and with all benefits due him under the group hospital and life insurance policies for the aforementioned period; and all railroad retirement benefits due him, including unemployment and sickness benefits for the aforementioned period; and all vacation and holiday benefits due him under the current vacation and holiday agreements for the aforementioned period; and all other benefits that would normally have accrued to him had he been working in the aforementioned period in order to make him whole; and expunge his record.

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 were given due notice of hearing thereon.

Claimant an electrician, was employed by the Carrier at its 14th Street Facility, Chicago, Illinois. On July 21, 1981, he was notified by Carrier's maintenance Manager:

"Please be advised that I cannot approve your request for a 90 day leave of absence, however, I can give you a leave of absence from July 21, 1981 until August 10, 1981. You will return to work on August 11, 1981."

On September 3, 1981, claimant was further notified by the Maintenance Manager:

"Please be advised that under Rule 28(b) of your current Electrician union contract, you are terminated from the employ of Amtrak effective September 3, 1981. Your termination is based on the fact that this office has not been aware of your whereabouts since August 17, 1981. We have no records on file from you nor have you contacted this office on your status since August 17, 1981. A check of the call-in sheets shows that you have not called in either to advise us of your status.

Please return all company property to receive your final paycheck."

Rule 28 of the applicable Agreement provides:

"Rule 28

UNAUTHORIZED ABSENCE:

(a) Employees shall not absent themselves from their assigned positions for any cause without first obtaining permission from their supervisor. In cases 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 a medical doctor or that circumstances beyond their control prevented such notification."

Claimant contends that he was held out of service for an indefinite period by Carrier's nurse on August 11, 1981. The Carrier's submission contains a portion of a report by Carrier's nurse, dated August 11, 1981, which reads:

"Pt. advised he must see his foreman and report he is leaving. I told pt. I would send him to a specialist because his M.D. is a general practitioner (sic) and I would prefer him to see an orthopedist or neurologist. He refused."

The Carrier maintains that claimant did not report to his foreman as suggested by the nurse. The Carrier does not dispute that the claimant was informed by the Carrier's nurse that "...he must remain off until he can do his full job." The Organization contends that claimant called the Carrier on August 14, 1981, to verify his continued absence. The Carrier's records verify that claimant did call in on August 14, 1981. The only medical evidence submitted on behalf of claimant is a statement from Dr. David Axelrod, dated August 11, 1981, reading:

"DAVID AXELROD, M.D.
7531 Stony Island
Chicago, Illinois 60649

DISABILITY CERTIFICATE

Date. 8-11-81

Name Ron McMiller
ADDRESS 859 W 122 St
EMPLOYER Amtrak

To whom it may concern:

This is to certify that the above patient was under my professional care from 8-11-81 to 8-18-81 inclusive, and was totally incapacitated during this time.

This is to further certify that the above patient has now recovered sufficiently to be able to return to light work duties on 8-18-81.
regular

Restrictions _____.

(Sgd) David Axelrod"


The record contains nothing to support claimant's absence after August 18, 1981. We find, therefore, that the Carrier was correct in terminating his employment under Rule 28(b), previously quoted. Rule 28(b) is a self-executing rule, and does not require handling under any other rule of the agreement, such as Rule 23. See Award No. 9284 involving the same parties.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 6th day of June, 1984