

The Second Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

Parties to Dispute: (International Association of Machinists and Aerospace Workers
(National Railroad Passenger Corporation (Amtrak)

Dispute: Claim of Employees:

1. That the National Railroad Passenger Corporation (AMTRAK) be ordered to restore Machinist B. Bass to service and compensate him for all pay lost up to time of restoration to service at the prevailing Machinists' rate of pay.
2. That Machinist Bass be compensated for all insurance benefits, vacation benefits, holiday benefits and any other benefits that may have accrued and were lost in the period and otherwise made whole for all losses in accord with the prevailing Agreement dated September 1, 1977 and subsequently amended.

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 waived right of appearance at hearing thereon.

Claimant, B. Bass, was employed at Carrier's Chicago, Illinois, 16th Street facility as a Machinist during the time in question.

During the period June 22 through September 21, 1981, Claimant failed to report for duty and further failed to notify the Carrier of the reason for his absence during the period.

On September 4, 1981, a certified letter was sent by the Carrier to Claimant informing Claimant that unless he presented Carrier with a Doctor's note regarding his medical condition by September 14, 1981, he would be considered to be in violation of Rule 28(b) of the Agreement.

Rule 28 states as follows:

"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 did not respond to the September 14, 1981, letter by the required date. Consequently, on September 21, 1981, Carrier notified Claimant by certified mail that Claimant was in violation of Rule 28(b), and therefore Carrier considered Claimant as having resigned from the service.

On October 19, 1981, Claimant presented Carrier with a medical disability certificate signed by Claimant's Doctor showing Claimant to have been totally incapacitated and under professional care from August 20 until October 15, 1981. According to the disability certificate, Claimant's incapacity was due to various back, neck, and arm injuries.

The Organization's position is that the Claimant did not violate Rule 28(b) of the controlling Agreement. The Organization argues that the submission of the medical certificate characterizing Claimant as "totally incapacitated" through October 15, 1981, complies with Rule 28(b)'s requirement to "furnish the Company evidence of physical incapacity as demonstrated by a release signed by a medical doctor".

The Organization further argues that a letter dated August 11, 1981, from Carrier's Shop Manager to Claimant, regarding a postponement of an investigation, makes it clear that Carrier knew that Claimant would be gone for an indefinite period.

The Carrier's position is that the Claimant absented himself from his assigned duties for five days without notifying the Carrier and, therefore, was properly terminated without an investigation under the self-invoking provisions of Rule 28. The Carrier asserts that Claimant's actions between June 22 and September 21, 1981, activated the automatic termination provisions of the Rule. The Carrier further argues that it was in no way obligated to restore Claimant to duty when he produced a medical certificate. The Carrier asserts that the notification requirement of Rule 28 can be excused only by evidence of physical incapacity to provide such notification, and that nothing, including the Claimant's medical certificate, established Claimant's physical incapacity to notify the Carrier. The Carrier argues that since Claimant was well enough to obtain his medical certificate on October 12, 1981, he must not have been too incapacitated to notify the Carrier.

After reviewing the entire record and the evidence in this case, this Board finds that the Claimant violated Rule 28 by absenting himself from duties from June 22 until September 21, 1981, and failing to notify the Carrier of the reasons for his absence.

Rule 28 is a self-invoking rule, and its violation results in automatic resignation by the employee unless there is evidence of physical incapacity. This Board finds that there is no evidence of Claimant's physical incapacity to notify the Carrier. The medical certificate submitted by the Claimant covers only the period from August 20 to October 15, 1981; Claimant's absence began on June 22, 1981. Thus, there is no evidence that the Claimant was physically incapable of notifying the Carrier from June 22 until August 19, 1981. During that period, Claimant was absent without notification for far in excess of the five days, giving the Carrier the authority to treat the Claimant as having resigned.

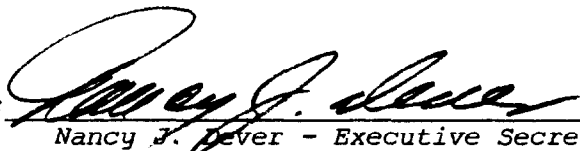
This Board finds that Rule 28(b) is a self-invoking rule; it does not result in the imposition of discipline. This conclusion is consistent with prior Board holdings. (See Second Division Award 9572.) Therefore, there is no need for a hearing. The Carrier did not violate the Agreement when it applied Rule 28(b) nor was the Claimant wrongfully deprived of a hearing.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 17th day of April 1985.