Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 26931
THIRD DIVISION Docket No. MW-26495
88-3-85-3-368

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(National Railroad Passenger Corporation - (Amtrak)
Northeast Corridor

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it improperly closed the service record of Mr. D. Carter (System File NBC-BMWE-SD-904).

(2) Mr. D. Carter shall be returned to service with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered."

FINDINGS:

The Third 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 was employed as a trackman. By letter dated November 17, 1983, Claimant was notified that because he had been absent from duty since August 25, 1983, Carrier considered him as having resigned from service under Rule 21(a) of the controlling Agreement. Rule 21(a) provides:

> "(a) Employees who absent themselves from work for fourteen (14) consecutive days without notifying their supervisor shall be considered as having resigned from the service and will be removed from the seniority roster unless they furnish the Carrier documented evidence of either physical incapacity or that circumstances beyond their control prevented such notification. In the absence of the supervisor, the employee shall notify the office of the Division Engineer on the division on which last assigned."

Claimant thereafter requested an appeal hearing; the hearing was held as scheduled on March 16, 1984, without Claimant's attendance. On March 30, 1984, Carrier notified Claimant that his appeal had been denied. The Organization subsequently appealed Carrier's denial.

This Board has reviewed the evidence in this case, and we find that the claim must be denied.

First of all, this Board does not have jurisdiction over this dispute because it has not been handled as required by the Railway Labor Act and the controlling Agreement. Under Rule 74(a), the Claimant had fifteen days from the date that the Carrier denied his initial appeal within which to further appeal the Carrier's handling of this matter. Rule 74(a) provides:

> "An employee who considers that an injustice has been done him in discipline matters and who has appealed his case in writing to the appropriate Assistant Chief Engineer (Track, C&S/ET, Structures) within fifteen (15) days, shall be given a hearing."

The Carrier notified the Claimant of its denial by letter dated March 30, 1984, which the Claimant received on April 2, 1984. The Organization did not notify the Carrier of its intent to appeal this denial until June 1, 1984; and, therefore, the Organization did not comply with the fifteen-day limit of Rule 74(a). This Board consistently has held that failure to comply with such time limits will bar a case from further consideration.

Moreover, the claim is without merit. Under the self-invoking provision of Rule 21(a), the Carrier properly considered the Claimant as having resigned from service when he absented himself from work for fourteen consecutive days without notifying his supervisor. The Claimant has not presented any evidence that he was physically unable to provide such notice, or that he was prevented from giving such notice by circumstances beyond his control. The Claimant could have presented such evidence at the March 1984, meeting, but failed to attend. There was nothing in the medical statements submitted later, on appeal, that show that the Claimant was unable to notify his supervisor of his absence; these statements indicate only that the Claimant was unable to perform service for the Carrier. Even if the Claimant was physically unable to work, he still was responsible for notifying his supervisor of his absence.

The record establishes that the Claimant failed to notify his supervisor of his absence from service; this fact is unrefuted by any evidence in the record. The Claimant failed to submit any evidence that mitigates his failure to provide such notice, nor did he provide the proof required by Rule 21(a) that he was prevented from providing such notice. This Board has held that medical statements showing that an employee is unable to work do not excuse the employee from the obligation of notifying the Carrier of his or her absence. Rule 21(a)'s penalty is self-invoking. Therefore, the claim is denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of March 1988.