

(Donald Boucher

PARTIES TO DISPUTE: (

(National Railroad Passenger Corporation (Amtrak)

STATEMENT OF CLAIM: "Statement of claim that Donald Joseph Boucher Sr. former employee of Amtrak, assigned to B + B foreman, headquartered at New Haven, Ct. be reinstated as soon as possible with all rights and privileges restored."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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.

As a result of Claimant's absence during the period of October 2 thru October 16, 1985, the Division Engineer notified the Claimant under date of November 1, 1985, that his employment in all capacities was considered terminated effective October 16, 1985, in accordance with Rule 21(a), which reads in relevant part as follows:

"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 of the division on which last assigned."

By letter dated April 23, 1986, Claimant requested authorization to return to work from the Division Engineer. On April 28, 1986, the Division Engineer denied Claimant's appeal because the Claimant had presented no evidence he was physically incapacitated, or that circumstances beyond his control prevented him from notifying his supervisor of the reason for his absence during the involved 14-day period.

Claimant thereafter requested an appeal hearing and one was scheduled for June 17, 1986. At the request of his representative, the appeal hearing was rescheduled for June 23, 1986. Claimant failed to appear at the hearing, but requested a second appeal hearing by letter dated June 28, 1986. That request was denied by letter dated July 2, 1986. Claimant continued to address correspondence to the Assistant Chief Engineer who reaffirmed his earlier declination by letter dated October 13, 1986. Thereafter, the Organization appealed the matter to Carrier's Director-Labor Relations who denied the appeal under date of March 20, 1987, resulting in Claimant's July 15, 1987 Notice of Intent to progress his case to this Board.

Upon careful consideration of the entire record as developed on the property, we conclude that the claim must be denied. Under the self-invoking provision of Rule 21(a), the Carrier properly considered the Claimant as having resigned from service because he neither reported for an October 2, 1985 physical examination as directed, nor contacted his supervisor during the ensuing 14-day period. No evidence was presented on appeal suggesting that the Claimant was physically unable to contact his supervisor, nor was any evidence presented indicating he was prevented from contacting his supervisor by circumstances beyond his control. His continued silence was at his peril.

Rule 21(a) is a self-invoking Rule, and its violation results in automatic resignation by the employee unless one of the exceptions applies. Those exceptions to the Rule are not applicable here. This decision is consistent with Third Division Awards 26931 and 26535 on the property.

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 20th day of July 1988.