

The Third Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

(Pamela Jones
PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation (Amtrak)

STATEMENT OF CLAIM:

"Whether the Carrier violated the BRAC/NRPC Agreement of July 21, 1972, as revised 6/27/74, in particular Rules 21, 24 and others when it arbitrarily and discriminately terminated Pamela Jones who was on medical leave, without imparting her a fair and impartial trial.

On Monday 2/29/88, Pamela Jones, seniority date 8/18/86, attempted to return off of her medical leave and arrange a return to work physical at Fort Washington. Ms. Jones was informed by D. Stewart of the carrier that her employment was terminated. Pamela Jones was on a legitimate medical leave and was under a doctor's care. She was not afforded a fair and impartial hearing, nor did she receive a letter of Notice of Investigation.

Pamela Jones claims immediate restoration of employment and compensation of one day's pay at the pro rata rate for each day commencing 3/1/88 and continuing each working day thereafter until she is restored to service."

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 were given due notice of hearing thereon.

Claimant entered Carrier's service on August 18, 1986. She was employed as a Reservation Sales Agent at Carrier's Mid-Atlantic Reservation Sales office in Fort Washington, PA, when, on August 11, 1987, she requested a medical leave. By letter dated August 12, 1987, Claimant's request for medical leave was granted with the reminder that information from her physician relative to the diagnosis and prognosis of her illness was required by the 5th consecutive calendar day of confinement. She was further reminded that "medical certification is to be renewed every 30 calendar days until you are released by your physician to return to FULL DUTY."

Subsequently, and because nothing had been heard from Claimant or her physician, a second communication was sent to Claimant on September 22, 1987, informing her that an appointment had been made for her to be seen by an Amtrak physician on October 1, 1987, to substantiate her medical leave of absence. This piece of certified mail was returned to the Carrier marked "unclaimed."

On October 5, 1987, a third communication was sent to Claimant reminding her that she had failed to comply with Carrier's medical leave policy by failing to furnish medical documentation and that she had placed herself in an A.W.O.L. status as of August 15, 1987. She was instructed to furnish such medical documentation within ten (10) calendar days of receipt of that letter in order to substantiate her continued absence. This piece of certified mail was also returned to the Carrier marked "unclaimed."

Under date of October 26, 1987, a fourth communication was sent informing Claimant that in accordance with the provisions of Rule 21(c) of the Agreement, she had forfeited her seniority. A copy of this letter was sent to the Organization. Claimant received and signed for the October 26, 1987 letter. Still nothing was heard from Claimant.

The next communication of record is a "To Whom It May Concern" memo dated November 9, 1987, received by Carrier November 16, 1987, from a physician advising that Claimant had been under his care since August 11, 1987, and was scheduled for further examination on November 10, 1987. There is nothing to be found in the on-property record to indicate that Claimant made any attempt to make any contact with the Carrier. It was not until February 29, 1988, that Claimant contacted Carrier via telephone indicating that she wished to return to service. She was again informed that she had forfeited her seniority in accordance with the provisions of Rule 21(c) of the Agreement and had been so notified on October 26, 1987. Subsequently, a claim on her behalf was initiated and progressed through the usual on-property grievance handling procedures. Failing to reach a satisfactory resolution of the claim during the on-property handling, it has come to this Board for final adjudication.

It must first be pointed out that this Board is an appellate review Board. Our considerations are limited to those issues, arguments and items of evidence which were developed, advanced or presented during the on-property handling of the claim. We may not consider issues, arguments or evidence which are raised or presented for the first time before this Board. Our determination is based solely on the record which was developed by the parties during their on-property handling.

The Agreement provisions which were cited in this dispute are Rule 21 - Leave of Absence and Rule 24 - Discipline-Investigation-Appeal. Rule 21, in pertinent part, reads as follows:

"(c) An employee who fails to report for duty at the expiration of leave of absence shall forfeit his seniority rights and be considered out of service unless the employee presents sufficient proof that circumstances beyond his control prevented such return. In such case, the leave will be extended to include the delay."

Rule 24, in pertinent part, reads as follows:

"(a) An employee who has been in service more than ninety (90) calendar days shall not be disciplined or dismissed without a fair and impartial investigation,"

It is Claimant's contention that Rule 21(c) is not a self-executing Rule; that Rule 24 was violated because no investigation was accorded; that the discipline was excessive; and, that she had no reason to believe that Carrier had discharged her until February 29, 1988.

Carrier argues that Rule 21(c) is a self-executing Rule; that Rule 24 has no application in this case; and that Claimant failed to provide evidence to justify her continued absence.

This Board has carefully reviewed and diligently considered the entire record in this case and finds that all of the due process rights to which Claimant is entitled under the provisions of the negotiated Agreement have been granted. This is not a discipline case. Rule 24 has no application to situations of this type. Boards of Adjustment created under Section 3, First and Second of the Railway Labor Act, as amended, have so ruled on numerous occasions. The following excerpt from Third Division Award 22327 is on point and is cited in support of our decision in this case. There it was ruled:

"Rule 21-C is clear, unambiguous, and essentially automatic in its operation. Under the rule, an employee voluntarily forfeits his seniority rights by failing to return from leave of absence. The record in this case includes no reference to unavoidable delay which might warrant an extension of the leave. The record also shows no evidence that Claimant requested an extension of his leave within the applicable time frame.

. . . .

Claimant did not communicate with Carrier for some 38 days after he was placed on leave starting June 14 nor did he furnish Carrier with a doctor's statement as requested. We must admit to some puzzlement as to why Claimant did not comply with Carrier's request. The point is, he did not, and the self-executing provision of Rule 21-C was triggered. We must conclude, therefore, that Claimant absented himself from his assignment beyond the period of his authorized leave and thereby terminated his employment relationship."

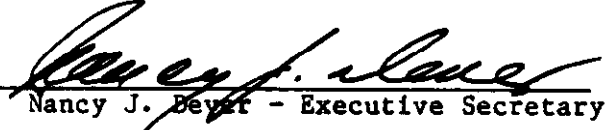
We also cite in support of this principle Third Division Award 22837, Award 7 of Public Law Board 4267 and Award 99 of Public Law Board 3783.

Claimant's argument that she had no reason to believe that Carrier had discharged her until February 29, 1988 is incredible in light of her receipt of Carrier's October 26, 1987, communication and the clearly stated contents thereof. She had an obligation to provide bona fide evidence of her inability to comply with the requirements attendant to her medical leave of absence. There is nothing in this record to show that she met that obligation. Rule 21(c) was properly applied and the claim is denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of July 1991.