

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36010
Docket No. SG-36132
02-3-00-3-323**

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

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation (Amtrak)**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the National Railroad Passenger Corp. (NRPC-S):

Claim on behalf of J. A. Purnell, for reinstatement to service with all rights and benefits unimpaired and compensation for all lost time. Account Carrier violated the current Signalmen’s Agreement, particularly Rule 48, when Carrier dismissed the Claimant from service without just and sufficient cause and without a fair and impartial investigation. Carrier’s File No. NEC-BRS(S)-SD-829. General Chairman’s File No. JY3266-18-0699. BRS File Case No. 11225-NRPC-S.”

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 employee 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.

On February 9, 1999, the Carrier notified the Claimant that in accordance with Rule 51 of the Agreement, he was removed from service. Throughout this dispute the Carrier notes that Rule 51 is self executing when, as here, the Claimant was absent from duty for more than 14 days without notification. Rule 51 states:

"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.

If the Carrier refuses to accept such documented evidence, the employee or his representative may appeal such action in accordance with the discipline procedures."

The Carrier points out that the Claimant was scheduled to report to work on January 11, 1999, and did not do so. Although he called that day to request an extension of vacation, it was not granted. The Carrier next heard from the Claimant 15 days later when he called the Trouble Desk to state that he was off for personal reasons.

The Organization argues that the Claimant notified the Trouble Desk "on several occasions." During the appeal on property, which followed the Carrier's February Notice of Termination, the Organization presented two medical statements attesting to the fact that the Claimant had met with a physician on January 30, 1999 for "periphlebitis neuritis" to which he was "started on NSAIDS and bedrest" indicating a follow up on February 16, 1999, and a second statement that the Claimant exhibited "post traumatic stress disorder as well as periphlebitis neuritis, S/P varicose veins ligation stripping and recurrent right leg ulcer." The Organization maintains that as a long term employee with known medical problems who requested emergency vacation, the denial and subsequent removal under Rule 51 was capricious.

The record at bar documents the following. The Claimant contacted his Foreman on January 4, 1999 and requested a vacation day and it was granted. The information was forwarded to Test Inspector O'Brien. On January 5, 1999, the Claimant again called his Foreman and requested "vacation for the remainder of the week" which was granted and the information relayed to Test Inspector O'Brien. The evidence is that

the Claimant was then due to return to service on January 11, 1999. On that date, the Claimant called and requested another weeks vacation from January 11 - 15, 1999. He was told he would have to call back and talk directly with Test Inspector O'Brien. The Claimant did call back and was informed that no more vacation would be authorized until he talked directly with Supervisor Slimbock.

A review of the statements from Foreman DiNardi, Test Inspector O'Brien and Supervisor Slimbock indicate that the Claimant never stated a reason for his requested vacation time. Further, the Claimant did not call Supervisor Slimbock to request additional vacation time. Supervisor Slimbock states that the Claimant "never call[ed] me or left a message on my voice mail." The Board notes that when the Claimant failed to return to work, Test Inspector O'Brien left messages twice between January 12 and 29, 1999, over the Claimant's pay status and the calls were not returned.

The Board notes however, that the Organization argued on property that the policy of marking off was to "call the trouble desk or your Foreman." It points out that the Claimant did both and further, that the Claimant followed standard policy when marking off in that the "Trouble Desk issues orders in the name of the Supervisor." The Organization also argues that the Claimant "was under the assumption that he was granted the Vacation that he requested. . . ." There is no denial by the Carrier that the Claimant did call the Trouble Desk. The Carrier's statement is that the Claimant "may have called the Trouble Desk at some time during that period . . ." but it would not have satisfied the Rule.

After full consideration of the facts and circumstances of this instant case, the Board must agree with the Carrier to the extent that the Claimant violated Rule 51. The Claimant's actions do not satisfy the Rule. The fact that he called the Trouble Desk during that period of time and again on January 26, 1999, to note that he was off for "personal reasons" indicates that he had the capability of contacting his Supervisor during the time at issue.

However, this is a long term employee with significant medical problems who in requesting off did so for "personal reasons." There is no evidence that the Claimant simply disappeared for the 14 days or willfully evaded his employment. This Claimant appears from the record, to have regularly obtained approval from the Trouble Desk to utilize available vacation days for his condition, rather than contacting his Supervisor. He also appears to have stayed in contact to some degree with the Trouble Desk. While

we cannot ignore the Claimant's failure to contact his Supervisor and his violation of Rule 51, in this specific set of circumstances, we find the Carrier's actions excessive. The Claimant should be returned to service if he can pass the requisite physical, but without backpay, and with seniority unimpaired.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 16th day of April, 2002.