

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36778
Docket No. CL-37255
03-3-02-3-277

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

PARTIES TO DISPUTE: (Transportation Communications International Union
(National Railroad Passenger Corporation (Amtrak)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-12815)
that:

1. The Carrier acted arbitrary and in an unfair manner violating Rule 12, 24, Article XIV of the September 06, 1991 Mediation Agreement, Section 10 of the September 02, 1994 Agreement and other related rules of the agreement. As of May 21, 1998 the Carrier has failed or refused to allow Claimant to return to service off a medical leave of absence, despite her(sic) release from her(sic) doctor.
2. The Carrier shall be required to immediately compensate Claimant (Vincent Penman) eight (8) hours at the Baggage man straight time rate of pay for each day he is held from service until the dispute is resolved. Baggage man is the last position held by Claimant prior to being injured on the job.”

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.

At the time of the incident that gave rise to this case, Claimant Vincent Penman was employed by the Carrier as a Baggage man in Chicago, Illinois. On September 14, 1996, the Claimant sustained an on-duty injury. On October 14, 1996, the Claimant took his return-to-duty physical examination. He was thereupon cleared to return to work on October 16, 1996. He did not report to work, nor did he call in to explain why. Between January 10 and May 13, 1997, the Carrier requested and received medical documentation to support a Medical Leave of Absence. On August 21, 1997, the Carrier again requested medical documentation by September 5, 1997. A Certified Mail letter was sent informing the Claimant that he should supply medical documentation to support his absence by September 5, 1997. The Carrier did not receive that documentation. On September 8, 1997, a letter was sent to the Claimant indicating that he was considered to have resigned under the Abandonment of Position Rule. That Rule reads as follows:

"An employee, not on an authorized leave of absence, who is absent from his/her assignment for more than 15 calendar days without notifying his/her supervisor will be considered as having resigned and will be removed from the seniority roster. However, if the employee can show that he/she was medically and mentally incapacitated during the entire absence, the employee's seniority will be restored unless dismissed for other reasons. Prior to terminating an employee's seniority a letter must be sent by certified mail to the employee's address of record requesting that the employee immediately contact his/her supervisor."

A claim was filed alleging that the Carrier had improperly withheld the Claimant from service, because it failed to allow the Claimant to return to work

after being released by his doctor. The claim was denied at all levels and is now before the Board for final and binding resolution.

The Board reviewed the record and has concluded that the Carrier did not violate any of the cited rules in dealing with the Claimant. This Claimant is one more in a long line of employees who, after being injured on the job and becoming the plaintiff in an FLEA case, exert a considerable amount of effort to establish that they are not capable to return to work in the hopes of bolstering their claims against the railroad. Not infrequently, such employees run afoul of the attendance and the leave Rules. The Claimant maintained silence for a considerable period of time about his condition and his desire and ability to return to work. By so doing, he ran afoul of the Abandonment of Position Rule. He did not supply the requested medical information when directed to do so. He was absent from his position on a number of occasions for more than 15 days. In effect, he behaved as if he had abandoned his job. Under the Rule cited above, the Carrier removed the Claimant from the seniority roster. It was within its rights to do so.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 29th day of December 2003.