

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36794
Docket No. CL-37425
03-3-02-3-441

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-12909)
that:

Carrier, on January 22, 2001 removed Mr. George J. Duguay from the Amtrak Seniority Roster. Mr. Duguay belongs to District 1089 in the jurisdiction involved in this dispute.

The Organization disputes the charges and subsequent removal of Mr. G. J. Duguay and requests Mr. Duguay's immediate reinstatement to the Seniority Roster until a complete investigation can be requested.

Carrier states in its document (dated 01-22-01) the alleged violation of Mr. Duguay of not responding in a timely fashion to Carrier's requests of January 5, 2001.

(Both documents are attached for ready reference).

Carrier in citing its right to act in vogue quotes Article 3, Section 10, (Abandonment of Position) as its ground rules for eliminating Mr. Duguay from the Seniority Roster, however, it neglected to read the entire rule and as both parties shall attest to there are mitigating circumstances which should have negated Carrier's action.

Carrier shall now reinstate Mr. George J. Duguay to the proper Seniority Roster in District 1089. Carrier shall now restore all benefits taken from Mr. Duguay due to Carrier's action. Carrier shall now pay all back medical bills and other bills incidental to its removing Mr. Duguay from the Seniority Roster."

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 G. Duguay was employed as a Baggage man at Providence, Rhode Island. The Claimant went out on a Medical Leave of Absence on March 18, 2000. He returned to work on November 29, 2000. At the end of his shift on that day, he experienced some sort of medical episode and was taken by emergency medical personnel to Providence, Rhode Island Hospital. Since November 29, 2000, the Claimant contacted the Carrier only once. He called his Supervisor on December 22, 2000 to request a paycheck for the unused vacation time he had. On January 22, 2001, the Carrier removed the Claimant from the seniority list under authority of Article III, Section 10 of the Agreement. (Allegedly the Claimant had abandoned his position.)

On February 13, 2001, a claim was filed contesting the Carrier's right to remove the Claimant from the seniority list. The Organization, among other things, alleged that the Claimant never received a January 5, 2001 letter from the Carrier instructing him to supply the Carrier's medical office with his medical records.

After considerable discussion and correspondence on the issue, the Carrier's Division Manager agreed to reinstate the Claimant to service, but with no pay for lost wages. He also indicated that the Carrier would attempt to contact the Claimant's Doctor to obtain his medical records.

On August 27, 2001, the Carrier sent the Claimant the following letter:

"August 27, 2001

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
CERTIFIED MAIL NUMBER 7000 2870 0000 7813 5127

Mr. George Duguay
1605 Douglas Avenue, Apt. 17
North Providence, RI 02904

Dear Mr. Duguay:

Our records indicate that your claim was partially substantiated.

You are hereby ordered to notify this office within ten (10) days of receipt of this letter when you plan to return to work so that we may schedule a "Return to Work Physical." You may contact me at (401)727-7380.

Failure to comply with this request will be considered as insubordination.

Sincerely,
Carl Harmankoch
Supervisor

cc: Kevin Scullin, Asst. Gen. Mgr.
Lou DePhillips, Labor Relations
Bob Conti, TCU Representative
Personal File"

In response to the Organization's latest appeal of the claim, the Carrier sent the following response:

"July 15, 2002

**Mr. Anthony P. Santoro, Jr.
General Chairman, System Board No. 86
Transportation Communications Union 309 "A" Street
Wilmington, DE 19801**

**RE: G. Duguay, Operator
Boston, MA**

Dear Mr. Santoro:

Thank you for your April 22, 2002 letter concerning the above dispute. I regret taking so long to respond but our investigation into those items in your letter have taken time. Our records indicate that on August 27, 2001 Mr. Duguay was sent a letter via Certified Mail requesting him to notify his supervisor within ten (10) days of receipt of the letter as to when he (Duguay) was planning to return to work. This, so Amtrak could schedule a "Return to Work Physical" for him. A copy of this letter is attached.

To date, some 11 months have passed and we have not heard anything from Mr. Duguay. Nobody seems to know his whereabouts. TCU Representative Conti was copied on this letter. Maybe Mr. Conti knows where the claimant is or his physical/mental condition. If you receive information about his whereabouts or an address/phone number where he can be reached, we will be glad to contact him.

Notwithstanding the above, it is still our position that claimant is not entitled to any compensation.

Very truly yours,

**L.D. Miller
Director-Labor Relations"**

It appears from the record that the last official piece of correspondence in the record is the above-quoted letter from L. D. Miller to A. P. Santoro, Jr. The Board can find no fault with the position taken by the Carrier at this point. The Claimant has been very elusive over the life of this claim. He went out on Medical Leave on March 18, 2000. He returned to work on November 29, 2000, for just one day. He is alleged to have talked to his Supervisor about his pay for unused vacation on December 22, 2000. He has not been heard from since. The Carrier is not obligated to continue a search program to find the Claimant when it appears there is no end in sight.

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.