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**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36946
Docket No. SG-37141
04-3-02-3-100

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(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-N):

Claim on behalf of A. C. Peebles, for reinstatement to her position account Carrier violated the current Signalmen's Agreement, particularly Rule 51, when it dismissed the Claimant for being absent without permission then refused to consider the mitigating circumstances of her absence. Carrier's File No. NEC-BRS(N)-SD-923. BRS File Case No. 11854-NRPC(N)."

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.

The Claimant was assigned to the position of Signal Trainee, C&S Construction, headquartered in Roxbury, Massachusetts. She went off on an alleged on duty injury in December 1999, and underwent physical therapy in January 2000. The Claimant remained off work without additional medical documentation being furnished. Although notified to report for a return-to-work physical exam on April 20, 2000, she did not do so but provided additional medical documentation concerning her absence. She was cleared by her doctor to return to work and scheduled by the Carrier for a physical exam on May 23, 2000. On June 12, 2000 the Carrier's Medical Director found her fit for duty and she was scheduled for a drug & alcohol test on June 16, 2000. The Claimant failed to appear, and the test was rescheduled for July 7, 2000. On July 17, 2000 the Claimant was notified that she had passed the test and was to return to duty on July 18, 2000. She did not report to duty on July 18 or thereafter and did not contact the Carrier to advise of the reasons for, or intended length, of her continued absence. By letter dated August 2, 2000 the Claimant was advised that because she had been absent for more than 14 days without notifying her supervisor, she was considered to have resigned under the self-invoking provisions of Rule 51, Absent Without Permission, which provides:

"Employees who absent themselves from work for fourteen (14) consecutive days without notifying their Supervisor shall be considered as having resigned from 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 Organization initiated the claim protesting the action on September 6, 2000, and presented documentation concerning the Claimant's circumstances including the fact that she lost her home and her family had been in an emergency shelter program since May 8, 2000 and she had difficulties with child care preventing her return to work in June, a supplemental doctor's statement filed with the Railroad Retirement Board on June 16, 2000 and September 1, 2000 in support

of her original disability claim dated March 24, 2000 and her July 28, 2000 disability claim for supplemental benefits, and other medical records dated June 16, 2000. The Carrier disagreed that the documentation demonstrated the Claimant's physical incapacity preventing her from notifying the Carrier concerning her condition and contended that it came at a stale time.

The Organization argues that the Carrier improperly failed to accept and consider this documentation and the mitigating circumstances of the Claimant's situation as required by Rule 51, and asserts that it cannot enforce a Rule by rote without consideration of any compassion or fairness to the individual situation, relying upon Third Division Awards 31845, 31918; Second Division Award 12618. The Carrier argues that it fully complied with the self-invoking provisions of Rule 51 when it considered the Claimant to have resigned when she absented herself from work for 14 consecutive days without notifying her Supervisor, and asserts that the Claimant did not provide any credible evidence of either physical incapacity or circumstances beyond her control that prevented such notification, although it considered what she presented, however untimely, relying on Public Law Board No. 4568, Award 3; Public Law Board No. 3783, Awards 216 and 276; Third Division Awards 26931, 28308; Second Division Awards 2406, 9511, 10378.

A careful review of the record convinces the Board that the Organization failed to establish a violation of Rule 51 in this case. Despite the Claimant's unfortunate circumstances, which were presented to the Carrier after the removal of the Claimant's name from the seniority roster, we cannot find that the Carrier abused its discretion in finding that the documentation submitted did not prove either physical incapacity or circumstances preventing the Claimant's notification of her absence to her supervisor. The correspondence on the property shows that the Carrier did consider the documentation submitted by the Organization on the Claimant's behalf, and set forth the reasons why it did not establish the requisite level of incapacity. Rule 51 is a self-invoking provision which clearly states that an employee will be considered to have resigned if s/he absents herself from work without notification for 14 consecutive days. Public Law Board No. 4568, Award 3; Second Division Award 10378. The Claimant did not report to work between July 18, 2000 when she was instructed to do so after passing her physical examination and August 2, 2000, the date of the termination letter. Thus, she met the conditions

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for resignation in Rule 51, permitting the Carrier to remove her from the seniority roster. Accordingly, the claim must be denied.

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 22nd day of March 2004.