

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37399
Docket No. MW-37881
05-3-03-3-253

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Union Pacific Railroad Company (former Missouri
(Pacific Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The dismissal (seniority termination) of Mr. A. Acosta for alleged absence without authority following an on-duty injury on August 19, 2001 was arbitrary, capricious, unwarranted and in violation of the Agreement (System File MW-02-75/1319294 MPR).
- (2) As a consequence of the violation referred to in Part (1) above, Mr. A. Acosta shall now have all seniority rights restored on the respective seniority rosters and he shall be compensated for any lost wages he may incur subsequent to March 22, 2002.”

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.

This claim challenges the termination of the Claimant's seniority pursuant to Agreement Rule 14 as of January 18, 2002. Rule 14 is a self-invoking Rule with specific procedural requirements and time limits. It reads as follows:

"RULE 14 ABSENCE WITHOUT AUTHORITY

- (1) Employees who are continuously absent without authority from their position for a period of thirty (30) or more calendar days may be treated as having resigned and their names removed from the seniority roster.
- (2) Before the employee is considered as having resigned and his name removed from the roster, the employee will be notified at his last known address by Certified Mail - Return Receipt Requested that failure to return to service or show cause within seven (7) calendar days of receipt of the letter will be treated as a voluntary resignation and his name removed from the seniority roster. A letter mailed to the last address of record with the Carrier will be considered delivered. A copy of such letter will be sent to the General Chairman.
- (3) If the employee should respond to such letter within the time limit specified, the Carrier shall have the option of allowing the employee to return to service for good cause shown or citing him for formal investigation under the provisions of Rule 21 (Discipline and Investigations) of the Collective Bargaining Agreement.
- (4) If the employee does not respond within the time specified, he will be considered as having resigned and his name removed from all seniority rosters."

Although the record contains a number of contentions, careful review of the evidence reveals that the analysis is controlled by the following facts. The Claimant injured his ankle on August 19, 2001 and received emergency room treatment. He reported the diagnosis to his supervisor that his ankle was bruised and should be iced overnight. He did not report for work again.

On October 4, 2001, the Carrier sent a certified letter to the Claimant's last known address requesting medical documentation to support his absence from work. It was signed for on October 6. When no information was provided within the time line requested, the Carrier sent another certified letter on November 19, 2001 repeating the request. It was received on November 19. Each letter gave the Claimant *approximately three weeks in which to respond.*

When no information had been provided by December 17, 2001, the Carrier sent the Claimant the "report or show cause" letter required by Rule 14(2). The letter complied with the procedural requirements of Rule 14 and was received by the Claimant on December 29. On January 2, 2002, the Claimant left his supervisor a voice message to the effect that he had the information and would be sending it.

When no documentation was received by January 18, 2002, the Carrier immediately sent the Claimant a certified letter notifying him that his name had been removed from the seniority rosters and that he was considered to have voluntarily resigned. The return receipt shows that the Claimant received the January 18 letter on February 8, 2002.

Although the General Chairman forwarded some documentation by letter dated January 28, 2002, the Carrier maintained that the Rule 14 time limit had already expired.

No claim was filed to challenge the Carrier's implementation of Rule 14 until May 14, 2002. Agreement Rule 22 imposes a 60-day time limit on the filing of claims.

Given the foregoing circumstances, we must find that the claim cannot be sustained under either of two independent lines of analysis. On the one hand, Rule 14 is self-invoking and contains specific procedural requirements and time limits.

The Carrier's action complied with those requirements. The Claimant's actions did not. We have no choice but to apply the parties' Agreement language as they wrote it.

On the other hand, the underlying claim that brings the dispute before us clearly did not comply with the procedural requirements of Rule 22. Thus, we have no choice but to reject it.

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 24th day of February 2005.