

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37626
Docket No. MS-38262
05-3-04-3-237**

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

**(John Arter
PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation (Amtrak)**

STATEMENT OF CLAIM:

"On April 29, 2002 I requested a leave of absence for family problems and stress. I gave a letter requesting this leave to Lou Therman, Supervisor, North Philadelphia, PA.

My physician, Dr. Alan Zweben, a Doctor of Internal Medicine, (610-447-6788) prescribed Zoloft and sent all medical information required to the company doctor located at 30th Street Station, Philadelphia, PA. Zoloft was not effective and in January of 2003 Dr. Zweben changed my medication to Paxil. (The Paxil has been effective).

"Joe Guzzie stated to Mr. Carzinski that he sent a packet regarding my leave to an address I gave him. Mr. Guzzie demanded to know more. (I was under the impression that only medical could ask for such information due to doctor patient confidentiality). Mr. Guzzie told me the packet was signed for. I was dating a lady at the time and the relationship did not work out. It turns out that the mother of this lady signed for the packet and then through it in the trash. This woman has been in a mental hospital many times. I called several times to see if any mail had arrived for me, I was told that nothing arrived, and was hung up on.

It is important to add that I called and left a message on Mr. Guzzie stating I would be living at my mother's home. I was never notified or called about a packet sent by registered mail!

Mr. Guzzie had my mother's phone number at home and at work and never called to leave a message for me stating he did not receive a response from me. It appears to me that Mr. Guzzie was so furious (since he is a boss in the Engineering Department) and was not able to find out my medical condition, that he has taken the matter personal.

I also contacted, William Manning, Union Rep. Mr. Manning must be very important because when asked to return a call he is too busy, does not represent the employee, and yet he is paid to be there for the men/women, if there is a problem.

In June of 2003, Dr. Zweben released me to return to full duty. I was sent to the medical department. Mr. Carzinski told me that I had to have Dr. Zweben fax all medical information to the medical department. In error, Dr. Zweben did not fax the first part of my medical to the department. I immediately called my physician and he re-faxed the necessary information. At that time, Railroad's medical doctor released me to return to full duty.

Mr. Denzel denied my employment in a letter he sent me. I called and made an appointment to meet with Mr. Denzel. Mr. Denzel told me at that meeting that there was not enough information to support my case. I called my physician and he sent all the information again. The railroad doctor cleared me for the second time to return to full duty. Yet I was still denied re-employment.

After this I went to the Railroad Human Resources Department and they denied my return.

I contacted the National Union in Philadelphia and they denied my return to duty and suggested that I contact you by June 1."

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.

By letter dated April 29, 2002, the Claimant requested a 90-day Leave of Absence under the Family Medical Leave Act beginning on May 4, 2002. The Carrier sent a certified letter to the Claimant at his address of record on May 6, 2002, including a FMLA packet which had to be completed prior to consideration of his request. The Claimant did not respond to the request for information and failed to return to work. On July 12, 2002 the Claimant was notified by certified mail that his request for a leave had been denied and that he was considered as having resigned from service under the self-executing provisions of Rule 21-A. While both letters were signed for as having been received, the Claimant asserts that he was not notified of their contents by the person signing for them. In July 2003 the Claimant submitted a doctor's note indicating that he was able to return to full duty. At that time he was advised that he had been terminated under Rule 21-A, but was provided an opportunity to submit documentation justifying his lengthy period of absence and failure to keep the Carrier advised of his whereabouts. The medical documentation provided indicated that the Claimant had been under medical treatment since April 2002 and had his medication changed in January 2003; it did not reveal any incapacitation on his part in the interim period. During the processing of the claim on the property, the Claimant confirmed the Carrier's evidence that he had been working for a landscaping company during the period of his leave.

The Claimant asserts that he was on medical disability leave and furnished the Carrier all requested medical information, on numerous occasions, to support his absence. He notes that he received no notice of any further requirements or of his termination because the person signing for the letters never informed him of them and the Carrier failed to contact him at his mother's home, despite knowing its address and phone number. The Claimant states that he is being treated unfairly by his supervisor who has not acted to safeguard him while employed and permitted improper acts of others without disciplinary consequences. The Claimant posits that he is capable of returning to work and that another medical return-to-work physical would confirm this.

The Carrier initially argues that both the protest of the Claimant's termination of his seniority pursuant to Rule 21-A which occurred on July 12, 2002 by claim dated July 30, 2003, and the initiation of the claim before the Board on May 20, 2004 when the Carrier's highest designated officer's decision occurred on December 2, 2003, are untimely and require dismissal on procedural grounds, citing Third Division Awards 26931, 27495, and 29886. As to the merits, the Carrier notes that even accepting the Claimant's assertion that he had no knowledge that his 90-day leave of absence had been denied, it leaves serious question as to his status after August 4, 2002, because the Claimant admittedly did not request an extension or notify the Carrier of his status until July 2003. The Carrier notes that it afforded the Claimant repeated opportunities to prove that he was medically unable to work during his one year absence, but the medical documentation furnished does not support his incapacitation, a fact borne out by his working as a laborer for a landscaping company during that time period. The Carrier argues that the Claimant walked away from his position, a situation Rule 21-A was designed to address, citing Third Division Awards 30758, 28308, 28000, 27777, 27228 and 26535.

The Board sees no need to address the Carrier's procedural arguments in this case because a careful review of the record convinces us that the Carrier appropriately applied the self-executing provisions of Rule 21-A to the Claimant after he had been absent from work for 14 consecutive days without notifying his supervisor or providing additional medical information in support of his request for a Leave of Absence under the FMLA. Even assuming that the Claimant should not be held responsible for receipt of mail to his address of record which was signed for by someone not willing or able to communicate its receipt to the Claimant (a finding

not supported by the record) there is no dispute that the Claimant did not seek to extend his requested leave of absence which he knew would expire on August 4, 2002 even if it had been approved, and had no communication with his supervisor about his whereabouts for a period of more than one year. The medical documentation submitted does not support his incapacity from either work or ability to contact the Carrier between May 4, 2002 and July 2003. Rather, the record confirms that the Claimant did perform other strenuous physical activity during the period of his absence. Accordingly, under the self-executing provisions of Rule 21-A, the Carrier properly considered the Claimant as having resigned his employment in July 2002, and the claim is without merit.

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 19th day of October 2005.