

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 38197
Docket No. MS-39408
07-3-06-3-47

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

(James Gravely
PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation (Amtrak)

STATEMENT OF CLAIM:

“Violation of Amtrak’s Standards of Excellence involving, Attending to Duties and Professional and Personal Conduct and violation of Amtrak’s National System Attendance Policy as a result of my absences and the appeal of my termination.”

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 presented his position in a phone conference with this Board.

At the time this dispute arose, the Claimant was a Welder on the Metropolitan Division.

The record shows that the Claimant was absent from duty on January 28, 29, 30 and February 3, 4, 5, 6, 10, 11, 12, 13 and 17, 2005. Further, the Claimant did not report for work between March 11 through the issuance of an April 4, 2005 letter of termination by the Carrier.

Given the number of days the Claimant was absent, substantial evidence supports the Carrier's conclusion that his absences were excessive. Further, the consecutive days missed commencing March 11, 2005 and the circumstances of those absences were sufficient to invoke the provisions of Rule 21-A:

"RULE 21-A ABSENT WITHOUT PERMISSION

- (a) Employees who absent themselves from work for fourteen (14) consecutive days without notifying their supervisor shall be considered as having resigned from the 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. In the absence of the supervisor, the employee shall notify the office of the Division Engineer of the division on which last assigned."

* * *

The Claimant's assertions that his wife advised his supervisor of his reason for being out are insufficient to change the result. There is insufficient direct evidence to support the Claimant's assertion concerning notice. In any event, the Claimant's absences were nevertheless excessive and, with respect to the consecutive absences after March 11, 2005 the Claimant did not sufficiently meet the other requirements specified in Rule 21-A to avoid the self-enforcing provisions of that Rule.

Nor do we find that termination was arbitrary. Even putting aside the self-enforcing loss of seniority provisions in Rule 21-A for the consecutive absences after March 11, 2005 (which is a sufficient basis to uphold the termination) the Claimant's prior disciplinary record shows warnings and other discipline for

absence related infractions. It was not arbitrary for the Carrier to conclude that the Claimant was not getting the message that he must come to work so as to require some discipline short of termination.

We also find from the documentation in the record, that the Carrier took the required steps to notify the Claimant of the proceedings involving his discipline.

In light of the above, the Carrier's procedural arguments need not be addressed.

On the basis of the above, the claim shall 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 18th day of May 2007.