

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40259
Docket No. SG-39971
10-3-NRAB-00003-070135
(07-3-135)**

The Third Division consisted of the regular members and in addition Referee Jacalyn J. Zimmerman when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(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.:

Claim on behalf of J. D. Buonopane, for reinstatement to his former position with all rights and benefits unimpaired and otherwise made whole for any losses incurred, account Carrier violated the current Signalmen’s Agreement, particularly Rules 50 and 57, when it terminated the Claimant’s seniority and employment in a letter dated September 22, 2005, citing provisions of Rule 50, paragraph (d), and failed to hold an investigation as required by Rule 57. Carrier’s File No. NEC-BRS(N)-SD-1075, BRS File Case No. 13706-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 facts of this case are not in dispute. The Claimant had been employed by the Carrier for 14 years. On September 22, 2005, the Carrier sent the Claimant a letter stating that its records indicated that he had exhausted his vacation entitlement and had been marked off continuously since July 13, 2005. The letter further noted that the Claimant had been granted no special permission to protect his seniority during his period of outside employment. The letter concluded that the Claimant forfeited his seniority pursuant to Rule 50(d) of the parties' Agreement, which provides, in relevant part:

“An employee absent on leave who engages in other employment . . . without special permission of the Division Engineer or Director - Labor Relations . . . shall forfeit all seniority rights under this Agreement and shall cease to be an employee of the Company.”

The record evidence indicates that the Claimant exhausted his vacation entitlement for calendar year 2005 and, beginning July 13, 2005, was placed on leave of absence. Thereafter, he marked off continuously. The Carrier subsequently became aware that the Claimant had been employed by another entity since July 5, 2005.

We carefully reviewed the record in its entirety. There is no dispute that following the exhaustion of his vacation entitlement, the Claimant was continuously absent from his assignment without authority. There is also no dispute that he was employed by another entity during this period of time without permission from the Carrier to engage in such employment. As the Carrier urges, these are clear violations of Rule 50(d). Moreover, despite the Organization's contention that the Claimant was entitled to a disciplinary Investigation, it is well settled that forfeiture Rules like the one at issue are self-executing and may be applied without resort to a disciplinary Investigation. Under the circumstances present here, we cannot say that the Carrier's decision to enforce the Rule was unreasonable, notwithstanding

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the Claimant's belated attempt to return to work. Therefore, 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 15th day of January 2010.