

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 41156  
Docket No. MW-41321  
11-3-NRAB-00003-100202**

**The Third Division consisted of the regular members and in addition Referee Patrick Halter when award was rendered.**

**(Brotherhood of Maintenance of Way Employes Division -  
( IBT Rail Conference**

**PARTIES TO DISPUTE:** (

**(National Railroad Passenger Corporation (Amtrak)  
( – Northeast Corridor**

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

**(1) The Carrier’s action in the termination of seniority of Mr. D. E. Barber on July 23, 2009 was arbitrary, capricious and in violation of the Agreement (System File NEC-BMWE-SD-4843 AMT).**

**(2) As a consequence of the violation referred to in Part (1) above, Claimant D. E. Barber shall now ‘. . . be returned to service and reinstated with full seniority rights and benefits restored based upon the facts and circumstances presented at the Appeal Conference.’”**

**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 entered employment with the Carrier as a Lineman Trainee on July 24, 2008. Carrier records show that the last day he reported for duty was July 6, 2009.**

**By letter dated July 23, 2009 the Assistant Division Engineer notified the Claimant that under Rule 21-A, Absent Without Permission, his absence from work for 14 consecutive days served as his resignation from service effective July 23, 2009. The Carrier's notification letter also notified the Claimant that it would reconsider his resignation if he provided documents within seven days from his receipt of the letter showing that he was physically incapacitated or that circumstances beyond his control prevented him from contacting his supervisor before or during his period of absence.**

**According to the Organization, the Claimant was incarcerated during the period of July 7 to July 28, 2009. The Organization asserts that a friend of the Claimant contacted the Power Director's Office on July 8, 9, and 10, 2009 to notify the Carrier of his incarceration, his anticipated release date, and subsequent return to work. In addition, the Claimant asserts that he advised the Electric Traction (ET) Office Assistant by telephone voice message of his incarceration.**

**On July 28, 2009, the Claimant was released from incarceration and received the Carrier's letter dated July 23, 2009. He contacted the Training Instructor, ET Office Secretary and ET Supervisor about his situation. In addition his attorney submitted a letter dated July 29, 2009. The Organization maintains that the Carrier had notice of the Claimant's 14-day absence and, therefore, he should not have been removed from service.**

**The progression of this claim on the property reveals it was processed in the usual and customary manner, including placement before the highest officer of the Carrier designated for handling it. Following a conference discussion on September 9, 2009, the dispute is now properly before the Board for adjudication.**

**Rule 21-A, Absent Without Permission, reads, in relevant part, as follows:**

**“(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.”**

Rule 21-A explicitly identifies the supervisor as the person to be contacted or notified by an employee absent from work. Telephone records provided by the Claimant do not show any contact with his supervisor; the Claimant did not contact his supervisor. He asserts contact with the ET Office Assistant and contact by a family friend with the Power Director’s office. However, there are no records of contacts allegedly made by the Claimant or the family friend.

Even if the contacts were made, they were not contacts to the Claimant’s supervisor. The Organization argues that ET workers commonly contact the Power Director’s office when marking off from a tour of duty. However, that does not relieve the Claimant of his responsibility under Rule 21-A to contact his supervisor - especially for an extended absence such as 14 days.

Rule 21-A is self-invoking, that is, if an employee is absent from work for 14 consecutive days without notifying his supervisor he shall be considered as having resigned unless he can demonstrate he was physically incapacitated or precluded from contacting his supervisor by circumstances beyond his control.

The Claimant does not argue that physical incapacitation precluded him from contacting his supervisor. However, he asserts his incarceration constituted a circumstance beyond his control. As noted in Third Division Award 25620, “[n]umerous Awards of this Board have held that confinement in jail does not constitute unavoidable absence for good cause.” Finally, exceptions to Rule 21-A are not established by the Organization and, thus, do not apply in this instance.

**In sum, the Carrier did not abuse its discretion or act in an arbitrary or capricious manner towards the Claimant when it terminated his seniority in accordance with the terms of Rule 21-A.**

**Based on the substantial record evidence, the Agreement was not violated and the claim will 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 21st day of November 2011.**