

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26042
Docket Number MW-26163

Philip Harris, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(National Railroad Passenger Corporation (Amtrak)
(Northeast Corridor)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it improperly closed the service record of Mr. E. Cohen (System File NEC-BMWE-SD-684).

(2) Mr. E. Cohen shall be returned to service with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: On July 8, 1983, the Claimant was notified by the Carrier that he was considered as having resigned and was therefore removed from the Seniority Roster as per Rule 21-A of the Agreement. The Rule is self-executing when an employee is absent fourteen consecutive days without notifying the Supervisor, unless there is documented evidence of either physical incapacity or circumstances beyond control preventing such notification.

The Organization contends that Claimant worked two of the days that the Carrier included in the absence count, and that the Rule was inapplicable because he was not absent at all because he had been released from his Gang. Furthermore, the Claimant produced a medical note after July 8, 1983, stating he could return to work on July 15, 1983.

The Carrier observes that the Claimant was absent more than fourteen days even if the two days in question were not counted, and that the doctor's note was produced after the fact and did not speak to any incapacity to notify the Supervisor within the proper time period. Also, Claimant was not released from his Gang nor was this assertion made on the property.

The Board concludes, based upon the narrow facts of the instant case, that Claimant shall be restored to service with his former seniority and all rights unimpaired, but without compensation for wage loss suffered. We deny his Claim for lost wages.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act as approved June 21, 1934;

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That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and


That the Agreement was violated.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 11th day of June 1986.