

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 28308  
Docket No. MS-27733  
90-3-87-3-365

The Third Division consisted of the regular members and in addition Referee Irwin M. Lieberman when award was rendered.

(Willie Bady  
PARTIES TO DISPUTE: (  
(National Railroad Passenger Corporation (Amtrak)

STATEMENT OF CLAIM:

"Under Rule 21A, whether Mr. Bady improperly absented himself from work for fourteen (14) or more consecutive days without properly notifying his supervisor. Mr. Bady contends that he was unable to work do (sic) to a physical disability, and that the employer's efforts to contact him to inform him of possible dismissal were inadequate. Mr. Bady brings this action in Appeal under the procedures of Rule 74."

FINDINGS:

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

The carrier or carriers and the employe or employees involved in this dispute are respectively carrier and employees 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 waived right of appearance at hearing thereon.

The record indicates that Petitioner suffered an on-the-job injury on December 17, 1985. He injured the ring finger of his left hand. According to Petitioner, he was under a physician's care until March 4, 1986, due to that injury. The record indicates further that Claimant made no contact with Carrier subsequent to his injury until after he received Carrier's certified letter dated February 21, 1986, which invoked the provisions of Rule 21-A. That Rule provides:

"ABSENT WITHOUT PERMISSION

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."

It appears further that Carrier sent Claimant certified letters on January 17 and 27, 1986, in an effort to ascertain his status and arrange for a physical examination. Both letters were returned unclaimed. The letter (to the same address) of February 21, 1986, resulted in a meeting on March 5, 1986, during which Claimant presented a letter from his physician which stated:

"This is to certify that William Bady has been under my care since his accident December 17, 1985 and may return to work on March 7, 1986."

That letter was dated March 4, 1986.

The Organization contends that Carrier's action in terminating Claimant was harsh and improper. Further, it is alleged by Claimant that he was not given proper notice of the required physical examinations and therefore Carrier acted improperly in invoking the provisions of Rule 21-A. It is also argued that Carrier was aware of Claimant's condition since it was caused by an on-duty incurred injury.

Carrier makes a number of procedural arguments with respect to the handling of this Claim on the property. More importantly, Carrier argues that Claimant was properly considered to have resigned from service in accordance with Rule 21-A since he absented himself from service for more than 14 consecutive days without notifying his supervisor. It is further alleged that there was no evidence presented that Claimant was prevented from notifying his supervisor of his absence and status due to physical incapacity or other circumstances beyond his control.

In view of the Board's findings with respect to the merits, it would serve no useful purpose to deal with the procedural arguments.


It is the Board's view that Carrier properly considered Claimant as having resigned from service when he failed to notify his supervisor of his status and absented himself for fourteen consecutive days. Claimant has not presented any evidence that he was physically unable to provide such notice or that he was prevented from giving such notice by circumstances beyond his control (see Third Division Award 26931 involving the same Agreement). The medical note presented by Claimant while specifying that he was unable to work, does not absolve him from the responsibility to notify his supervisor of his absence. Contrary to the Organization's position with respect to the non-receipt of the two certified letters from Carrier, the triggering mechanism in this case was Claimant's failure to abide by his contractual obligations, not any alleged failure of the Carrier. Rule 21-A has self-invoking provisions and penalty. The Claim must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 29th day of March 1990.