

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35749
Docket No. CL-36318
01-3-00-3-529**

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(National Railroad Passenger Corporation (Amtrak)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-12632) that:

- 1. The Carrier acted arbitrarily and in an unfair manner, violating Rules 12, 24, Article XIV of the September 6, 1991 Mediation Agreement, Section 10 of the September 2, 1994 Agreement, and other related rules of the Agreement. As of August 4, 1998, the Carrier has failed or refused to allow the Claimant to return to service off a medical leave of absence, despite her release from her doctor.**
- 2. The Carrier shall be required to immediately compensate the Claimant eight (8) hours at the commissary worker straight-time rate of pay for each day she is held from service beginning August 4, 1998 and continuing until this claim is honored and this dispute is settled.**
- 3. The Carrier further violated the agreement when it failed to disallow the claim within sixty (60) days of the date it was filed as mandated by Rule 25(a).**
- 4. As a result of the time limit violation, the Carrier shall now be required to allow the claim as presented under the self-executing provisions of Rule 25(a).”**

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.

On August 11, 1998, the Organization filed a claim on behalf of the Claimant, Dujuana Lawson, arguing that the Carrier terminated the Claimant on July 21, 1998, without offering the Claimant a Hearing in regards to her absence from work. The Organization asserts that the Carrier is required to compensate the Claimant eight hours at the commissary worker straight-time rate of pay for each day she is withheld from service, beginning August 4, 1998, and continuing until the claim is settled. The Carrier denied the claim.

The Carrier maintains that there is no Rule 10 dispute. The Carrier argues that its medical department did not receive medical documentation from the Claimant until after she had been terminated. The Carrier argues that the medical office and the Carrier were not notified of any medical leave until August 4, 1998. The Carrier also contends that the documentation provided by the Claimant did not meet the burden of proving that she was so medically or mentally incapacitated that resulted in her inability to contact her Supervisor. The Carrier also points out that the Claimant tendered her resignation from the Carrier, notifying her Supervisor. The Carrier maintains that there is no requirement that employees must resign in writing. The Carrier claims that because the Claimant quit and the Carrier did not hear from the Claimant, it issued its termination. The Carrier argues that in order to evade the consequences of her quit, the Claimant told her Supervisor that she had changed her mind. In addition, the Carrier points out that the Organization waived any right to assert a violation of the time limits in responding to a claim by not promptly doing so.

The Organization contends that the Claimant never submitted a written letter of resignation to the Carrier. In addition, the Organization argues that the Claimant went on a medical leave from July 1, 1998, due to pain in her lower back, until she was released by her doctor on August 4, 1998, to return to service. The Organization maintains that the Claimant provided the Carrier's medical department with all the proper and required documentation to support her absence from work. The Organization contends that the Carrier never challenged the doctor's statement. The Organization points out that the Carrier did not contact the Claimant prior to terminating her seniority requesting that she immediately contact her Supervisor, in accordance with Section 10 of the Agreement. The Organization contends that the Carrier sent the Claimant a letter on July 21, 1998, advising her that she was terminated from the service of the Carrier. The Organization asserts that employees absent because of personal sickness or physical disability shall notify their Supervising Officer as early as possible, and such employees will be considered on an indefinite Leave of Absence. The Organization further argues that if an employee can show that he or she was medically and mentally incapacitated during the entire period of absence, the employee's seniority will be restored unless dismissed for other reasons; and, in this case, the Claimant was not dismissed for any other reason. The Organization also contends that the Carrier did not respond to this claim in a timely manner, as it responded on October 23, 1998, in violation of Rule 25(a) which states that a Carrier must deny a claim within 60 days of it being filed.

The parties being unable to resolve the issues at hand, this matter came before the Board.

The Board has reviewed the extensive record in this case and it should be noted at the outset that there is no transcript of proceedings. Consequently, it is necessary, as it often is, to review the facts based solely on the documentation in the file.

The Carrier contends that the Claimant resigned her position with the railroad. The Board must find that there is simply insufficient evidence in the record of that resignation.

The Carrier relies on two letters both dated July 21, 1998, that were allegedly sent by Angela Adams, Manager of Catering Services, to the Claimant. In the first letter, Ms. Adams states that the Carrier has "been unable to contact you regarding your work status." In the next sentence she states, "although you expressed your

intention to resign from the company, we have not received the same in writing.” Consequently, it appears that there was some question as to whether or not there had truly been a resignation by the Claimant.

In the next sentence of that first July 21, 1998, letter, Ms. Adams states:

“Based on the above information, we have no other alternative than to terminate your employment per the T.C.U. contract, Article III, Section 10 (Abandonment of Position).”

In another letter, dated the same day, July 21, 1998, Ms. Adams states:

“On Wednesday, July 29, 1998, you indicated via the telephone that you objected to your recent notification of termination. You stated that you had notified the company on a daily basis of your inability to report for work after July 1, 1998, and that you had changed your mind about your decision to resign. (Emphasis added.)

However, our records do not reflect such notification nor did management receive the same. Therefore, the Company hereby upholds its position of termination per the Abandonment of Position rule located in Article III, Section 10 of the T.C.U. agreement.”

It is somewhat strange that in her second letter of July 21, 1998, Ms. Adams references a July 29, 1998, telephone conversation. Moreover, it is clear from both of the letters dated July 21, 1998, that the Carrier had terminated the Claimant per the Abandonment of Position Rule. It is not clear from any of those letters, or anything else in this record, that the Claimant actually had resigned her position.

Moreover, in a letter dated October 23, 1998, Angela Adams, the Manager of Catering Services, once again refers to the Claimant having been terminated. In the second paragraph, she states:

“Please be advised that medical documentation provided by Ms. Lawson was received after she had been terminated.” (Emphasis added.)

Three days later, Ms. Adams sent a letter to the General Chairman in which she first indicates that it is her assessment that the Claimant tendered her resignation from the Carrier. She then states, "This should not be confused with our letter of courtesy to officially sever her from active status."

The Claimant denies that she ever resigned her position. Moreover, on August 4, 1998, she tendered a letter to Ms. Adams stating the following:

"From July 1, 1998, to July 31, 1998, I have been under the care of Dr. Jackson Chen. Enclosed is a medical statement permitting my return to work."

Attached to that letter is the note from Dr. Chen, which states:

"Dujuana Lawson has been seen here for low back pain from July 1, 1998, to August 4, 1998. She is able to return to work on August 5, 1998."

The Organization subsequently filed a claim on August 11, 1998, in which the Vice General Chairman states that the Carrier had terminated the seniority of the Claimant. He objects to the letter of July 21, 1998, advising the Claimant that the catering department had already terminated the Claimant. He also states that the Carrier had an obligation to contact the Claimant prior to terminating her seniority.

Consequently, the Board finds that based on this record, it is impossible to come to the conclusion that the Claimant resigned her position.

Therefore, we must view this case as is stated in some of the letters from the Claimant's Manager that it is an "Abandonment of Position" termination pursuant to Section 10.

Section 10 (Abandonment of Position) states the following:

"An employee, not on an authorized leave of absence, who is absent from his/her assignment for more than 15 calendar days without notifying his/her supervisor will be considered as having resigned and will be removed from the seniority roster. However, if the employee can show that he/she was medically or mentally incapacitated during the entire

period of absence, the employee's seniority will be restored, unless dismissed for other reasons. Prior to terminating an employee's seniority a letter must be sent by certified mail to the employee's address of record requesting that the employee immediately contact his/her supervisor."

The record reveals that the Carrier did not send a letter by certified mail to the Claimant's address requesting that the employee immediately contact his/her Supervisor prior to terminating her seniority. According to the above-quoted Rule, that is a must. Moreover, the record has in it a statement from Dr. Chen that the Claimant was medically incapacitated during the entire period of her absence. The Carrier has submitted nothing to dispute the doctor's diagnosis. Consequently, the Board finds that it was inappropriate for the Carrier to summarily terminate the Claimant's seniority pursuant to Section 10.

Because the Board has found that the Claimant did not resign, and we also found that the Carrier did not properly terminate the Claimant's position pursuant to Section 10, we have no choice other than to sustain this claim.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 24th day of October, 2001.

SERIAL NO. 388

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

INTERPRETATION NO. 1 TO AWARD NO. 35749

DOCKET NO. CL-36318

NAME OF ORGANIZATION: (Transportation Communications International Union)

NAME OF CARRIER: (National Railroad Passenger Corporation (Amtrak))

The following claim is hereby presented to the Carrier on behalf of Claimant D. Lawson:

- “(a) The Carrier acted arbitrarily and in an unfair manner, violating Rules 12, 24, Article XIV of the September 6, 1991, Mediation Agreement, Section 10 of the September 2, 1994, Agreement, and other related rules of the Agreement. As of August 4, 1998, the Carrier has failed or refused to allow the Claimant to return to service off a medical leave of absence, despite her release from her doctor;**
- (b) The Carrier shall be required to immediately compensate the Claimant eight hours at the commissary worker straight-time rate of pay for each day she is held from service beginning August 4, 1998, and continuing until this claim is honored and this dispute is settled;**
- (c) The Carrier further violated the agreement when it failed to disallow the claim within sixty days of the date it was filed as mandated by Rule 25(a);**

- (d) As a result of the time limit violation, the Carrier shall now be required to allow the claim as presented under the self-executing provisions of Rule 25(a)."

The Third Division issued an Award sustaining the above claim on October 24, 2001. After the Award was issued and the Claimant was paid, the Organization requested an Interpretation as to whether or not the payment of the Claimant had been appropriate.

The Carrier determined that the Claimant, who had worked four hours a day as a part-time employee, would have accrued \$51,132.52 in backpay calculated on a four-hour day. Because the Claimant had earned monies totaling \$26,000.00 on a different job, that money offset the Claimant's backpay and she was paid a total of \$25,132.53.

The Organization contended that because the claim requested eight hours at the commissary work straight-time rate of pay for each day the Claimant was held from service beginning August 4, 1998, and the Carrier did not challenge the request for eight hours per day as stated in the claim, the Carrier should have calculated the Claimant's backpay on the basis of eight hours per day. The Board rejects that position of the Organization because it would unjustly enrich the Claimant, and we find that the Carrier's calculation of the backpay on the basis of four hours per day was appropriate. Therefore, the claim is sustained at the four-hour-per-day rate of pay and we find that the Claimant was properly paid.

Referee Peter R. Meyers who sat with the Division as a neutral member when Award 35749 was adopted, also participated with the Division in making this Interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 8th day of May 2003.